

(Revised 7/11)

ADMINISTRATIVE MANUAL
STATE OPERATED PROGRAMS
IN
SPECIALIZED CHILDREN'S HOSPITALS

DEPARTMENT OF EDUCATION
COMMONWEALTH OF VIRGINIA
(Revised July 2011)

Administrative Manual

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ADMINISTRATIVE MANUAL

Preface - In this manual Hospital Education Programs (HEPs) refer to the state operated programs (SOPs) at The Children's Hospital of the King's Daughters in Norfolk, the VCU Children's Medical Center and Children's Hospital in Richmond, and the University of Virginia Children's Hospital in Charlottesville. These programs are supervised by the Virginia Department of Education (VDOE). As support services in medical facilities, the HEPs' mission is to provide appropriate educational services to school-aged patients. Education and instructional plans are tailored to meet individual student's needs in coordination with the hospital treatment team and within the confines of the facility. This manual incorporates the mandates of P.L. 108-446, the Individuals with Disabilities Education Improvement Act (IDEA 2004); its federal implementing regulations; and the Regulations Governing Special Education Programs for Children with Disabilities in Virginia (July 2009).

I. Legislation, Rules, and Regulations

A. State

1. **Regulations** - As required by the provisions of IDEA 2004 and its implementing regulations, the VDOE must ensure the federal government that all persons with disabilities, ages 2 to 21, inclusive, have available a free appropriate public education (*Code of Virginia* 22.1-214). The Commonwealth's provisions are detailed in the Virginia Regulations.

Section 22.1-7 of the *Code of Virginia* addresses the educational responsibility for children in residence or in the custody of state agencies. "Each state board, agency, and institution having children in residence or in custody shall provide education and training to such children which is at least comparable to that which would be provided to such children in the public school system."

The following assurances must be guaranteed under the requirements of state regulations:

- a. A free appropriate public education (FAPE) will be available for each child with disabilities, ages 2 to 21, inclusive, residing in the facility.
- b. All children, ages 2 to 21, inclusive, residing in the facility who are disabled and need special education and related services are identified, located, evaluated, and placed in an appropriate educational program.
- c. Children with disabilities and their parents are guaranteed procedural safeguards in the process of identification, evaluation, or educational placement or the provision of a FAPE.
- d. To the maximum extent appropriate, children with disabilities will be educated with children who are not disabled.
- e. Confidential records of children with disabilities shall be properly maintained.
- f. Testing and evaluative materials used for the purpose of classifying and placing children with disabilities are selected and administered so as not to be racially or culturally discriminatory.
- g. An Individualized Education Program (IEP) will be maintained for each child with disabilities. A comprehensive system of personnel development to include the in-service training of special education instructional and support personnel, related to the needs of the children in residence, is provided.
- h. There will be ongoing parent consultation.
- i. A full educational opportunity goal is provided for all children with disabilities aged birth through 21, inclusive, including appropriate career education.
- j. Children with disabilities must be given the right of participating in the Virginia State Assessment Program (VSAP).

- k. Surrogate parents are appointed, when appropriate, to act as advocates to serve the educational interests of children, ages 2 to 21, inclusive, who are suspected of being or are determined to be disabled.
 - l. Educational objectives of the state board, agency, or institution are clearly stated in the program plan.
 - m. Strategies for achieving the educational objectives, including an organized system of staff development, are identified.
 - n. An assessment plan is in place for determining the extent to which objectives have been achieved, including, where practical, follow-up studies of former students to assist in annual program evaluation.
 - o. A system of communication between education staff and other personnel, including treatment staff, is in place to ensure coordination of program objectives.
 - p. A system of communication to ensure service continuity in the transition of a child into and out of the educational program of the facility is included in the program plan.
 - q. Additional state operated program (SOP) requirements specified in state regulations will be met.
- 2. Annual Plan** - Each HEP will submit to the VDOE appropriate policies and procedures for the development of an annual plan. The information must include a description of the current program of special education and related services and program projections. Forms, time frames for submission, and acceptable criteria for state approval are established annually.
- 3. Instructional Programs** - The instructional program must be designed to provide a continuum of program alternatives to meet the needs of each student and may include, if appropriate, the following:
- a. instruction in basic education skills;
 - b. prevocational, vocational, and career education;
 - c. preparation for high school graduation;
 - d. affective education skills;
 - e. preparation for Graduate Equivalency Diploma (GED®) examination; and
 - f. self-help skills.
- A minimum of 5½ hours per day or 27½ hours per week of instructional time is made available for each student.
- 4. Full Educational Opportunity** - The VDOE has a goal of providing a full educational opportunity to all children with disabilities aged birth through 21, inclusive, by 2015.

B. Federal

- 1. Public Law 108-446** - Public Law 108-446 requires that a FAPE be provided to all eligible children, ages 2 to 21, inclusive, with disabilities in Virginia. A FAPE includes special education and related services required to meet the individual educational needs of children with disabilities and ensures that their parents are protected under due process procedures.

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Part C of Public Law 108-446 provides for early intervention services for infants and toddlers with disabilities and their families. Each eligible child and family receive

- a. a multidisciplinary assessment of the child's strengths and needs and identification of appropriate services;
- b. a family-directed assessment of resources, priorities, and concerns of the family and family supports/services necessary to meet the child's developmental needs; and
- c. an Individualized Family Service Plan (IFSP), which is evaluated at least annually and reviewed at 6-month intervals.

2. **Section 504** - Section 504 of the Rehabilitation Act of 1973 provides that "no otherwise qualified handicapped individual...shall, solely by reason of his/her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." Programs operating in existing facilities must be constructed so as to be readily accessible to the disabled.

II. Functions of Agencies

- A. **Virginia Department of Education (VDOE)** - Authorization has been granted by statute 22.1-214.2 to the Virginia Board of Education for the establishment, operation, and supervision of education programs in children's specialized hospitals. State funds are provided for special education and related services in the special education appropriation. The VDOE

1. provides annual funding for HEP staff, materials and supplies, equipment, travel, and in-service training;
2. contracts with local school divisions to provide for the fiscal management of the program;
3. provides direct supervision of the HEPs;
4. monitors, enforces, and provides technical assistance and consultative services in the interpretation and implementation of state and federal laws and regulations pertaining to the education of children with disabilities;
5. reviews and evaluates the HEPs' compliance with state and federal laws and regulations;
6. disseminates significant information derived from research, demonstration programs, and projects involving children with disabilities;
7. determines job qualifications and assists in developing job descriptions; and
8. provides input into the hiring of administrative personnel.

- B. **Specialized Children's Hospitals** - According to the Additional Responsibilities of State Boards, Agencies, and Institutions for Education and Training of Children with Disabilities in Residence or Custody (2009), specialized children's hospitals shall provide an education program for school-age children. Specific functions include

1. providing adequate and appropriate classroom space and a library which meets minimum educational standards that may be established by state law and all maintenance needs of this space;
2. providing fiscal management of the federal component of the HEPs, if requested; and
3. providing a procedural manual for all HEP employees who work within the facility.

C. Local School Divisions (*Code of Virginia 22.1-209.2*) - In accordance with the annual Commonwealth of Virginia contracts between the VDOE and local school divisions related to services for children served in SOPs, it is the responsibility of the local school division to

1. administer the HEP budget for employee salaries, materials and supplies, equipment, travel, and in-service training;
2. hire administrative personnel, teachers, and support staff;
3. establish the general policies of personnel administration as detailed in a policy and regulations manual;
4. provide for the evaluation of instructional and administrative personnel; and
5. establish the school calendar.

D. Hospital Education Programs (HEPs)

1. **Mission Statement** - The mission of the Hospital Education Programs, as state operated programs, is to provide for the educational needs of students and families during their health care system encounters, ranging from long-term to ambulatory care. In collaboration with parents and the educational and medical communities, HEPs provide a continuum of services that promote academic achievement through continuity of instruction. Intervention, instruction, and engagement in artistic endeavors promote self-confidence and positive intellectual, social, emotional, and creative development in youth served.

2. **Compliance** - It is the policy of the Hospital Education Programs to adhere to federal and state regulations as they have been promulgated by the United States Department of Education and the Virginia Board of Education to implement special education programs for children with disabilities, consistent with the Individuals with Disabilities Act (IDEA). Specifically, these mandates are detailed in the Virginia Regulations and any additional documents that the Virginia Department of Education publishes to address federal and state statutes and regulations for delivering special education and related services to children.

3. **Educational Objectives** - The fundamental goal of the public schools of the Commonwealth is to enable each student, to the full extent of his/her abilities, to develop and apply the skills that are necessary for success in school, preparation for life, and reaching his/her full potential. In keeping with the rigorous educational objectives established by the Commonwealth of Virginia Board of Education, the Standards of Learning (SOL) form the core of the HEPs' educational programs along with other educational objectives, which together are designed to ensure the development of skills necessary for success in school and for preparation for life in the years ahead. Educational objectives articulated by the Board in the 2007 Standards of Quality emphasize, but are not limited to,

- a. basic skills of communication (listening, speaking, reading, and writing);
- b. reading (phonemic awareness, phonics, fluency, vocabulary development, and text comprehension);
- c. mathematical concepts and computation;
- d. proficiency in the use of computers and related technology;
- e. skills in scientific processes and concepts;
- f. knowledge of Virginia history and world and United States history (including the study of contributions to society of diverse people), government, economics, and international cultures;
- g. essential skills and concepts of citizenship;
- h. basic knowledge of geography necessary for participation in American society and the international community;
- i. foreign language;

- j. awareness of environmental issues;
- k. critical reasoning skills, including problem solving and decision making;
- l. skills to manage personal finances and to make sound financial decisions;
- m. health and physical education;
- n. fine arts;
- o. the development of personal qualities, such as self-esteem, sociability, self-management, integrity, and honesty; and
- p. the application of skills and knowledge in preparation for employment or further education or to qualify for further training and the ability to apply such skills and knowledge in preparation for eventual employment and lifelong learning.

4. Achievement and Assessment of Objectives - Students' length of stay and medical status impact the degree of their involvement in the HEP. Acknowledging these limiters, strategies for achieving educational objectives are addressed through varied means, including the planning and implementation of specific academic objectives and an organized program of staff development. Given that the overwhelming majority of HEP students are hospitalized for short- to intermediate-term stays, achievement of the HEPs' educational objectives is best assessed through follow-up studies that examine the reassimilation of students into their home schools.

Ongoing contacts with home school personnel assist HEP staff in the planning and implementation of instruction in specific academic areas such that, to the extent of a student's abilities, skill acquisition is coordinated with that of the student's peer group and aligned with appropriate SOL. HEP personnel may make accommodations or modifications in instruction as necessary to meet the needs of individual students. Assessment strategies may include oral tests, written tests, reports, teacher observations, checklists, and/or other appropriate assessment tools. In addition, children enrolled in the HEPs participate in the Virginia State Assessment Program (VSAP) as appropriate. The performance of individual children on these assessments measures their academic achievement and functional performance and serves as indicators of achievement of program objectives.

An organized program of professional development also contributes to the achievement of educational objectives. New requirements and procedures that impact program effectiveness are addressed through various offerings, including training to increase the proficiency of HEP staff in the administration and interpretation of standardized tests; training to enhance the knowledge, skills, abilities, and performance of HEP staff, i.e., presentations on current content and teaching practices in core curriculum areas; and programs focused on the acquisition and dissemination of significant knowledge gained through educational research and other sources.

To assess the achievement of educational objectives, HEP follow-up with home school personnel is conducted. It provides data that not only underscores the value of the HEP as a means of maintaining or increasing academic skills during hospitalization, but also identifies areas of needed program modifications. Likewise, information gleaned from patient satisfaction surveys, which are completed by parents, may also demonstrate HEP effectiveness as well as identify suggestions for improvement. Follow-up information from schools and parents together provides an avenue for meaningful annual program evaluation.

5. Program Description - HEPs operate as part of the overall treatment program for school-aged patients, ranging from long-term to ambulatory care. Appropriate instruction and extracurricular activities are provided, without cost, for each child in an endeavor to create an environment that duplicates home school experiences as closely as possible. Thus, the HEPs represent a stabilizing influence for children and their families during their encounters with the health care system. Additionally, HEPs function as an important link of continuity between the student and the home community. Through close cooperation with the interdisciplinary teams, hospital teachers and educational consultants contribute to the total treatment of patients by sharing pertinent information gained through observation, diagnostic assessment, and contacts with local school or agency personnel. Following discharge or in the ambulatory care setting, HEP educational consultants serve as liaisons between the medical teams and the students' home schools. In this capacity, hospital teachers and educational consultants may facilitate appropriate educational placement and programming, provide support or in-service training for the student's regular teacher, and inform the medical teams of potential problems with the patient, as reported by local school personnel during periodic follow-up calls.

6. Provision of Services - The HEPs provide a full educational opportunity goal to children with disabilities, from birth to 21, inclusive. A description of programs follows.

- a. **Infant Program** - Infant educators provide services to children from birth to 24 months. To facilitate the planning of a program during an infant's admission, a diagnostic assessment is administered, when appropriate, to ascertain the young child's current level of functioning. Based on the test results, an instructional plan is developed and implemented. Objectives may include tracking; touching; holding objects of various textures, shapes, and sizes; reaching for objects; responding to sounds and voices; and beginning problem solving. Parents are often present during sessions in an endeavor to promote parent education.

Should the infant's admission extend to 30 days, he/she is screened to determine if an Individualized Family Service Plan (IFSP) would be appropriate. When indicated, the parent is asked if he/she is interested in developing an IFSP. If so, procedures are implemented to ensure that an IFSP planning meeting is scheduled prior to the 45th day of hospitalization.

With parental permission, referrals are made to early intervention programs at the time of discharge. Any recommendations and/or IFSPs that have been developed are forwarded to the receiving agencies. For children approaching the age of two, the HEPs work collaboratively with early intervention programs and home school LEAs to ensure a smooth and effective transition to preschool or other appropriate services.

- b. **Preschool** - Daily individual and/or group preschool sessions are provided for children two years through kindergarten age. These programs focus on the major areas of child development: language/communication skills, fine and gross motor skills, self-help skills, and cognitive and social development. Additional sessions may be scheduled for student evaluation, arts and crafts, and cooking activities.

- c. School-Aged: Short-Term - This term refers to an admission period of more than three days, but less than two weeks.
 - 1) After the child has been seen for three days of instruction, the teacher initiates contact with the child's home school.
 - 2) Through the administration of screening instruments, the teacher assesses the child's current academic performance.
 - 3) Through daily individual and/or group instruction, the teacher assists the child in working on grade-level SOL, completing assignments, and/or in implementing the objectives of his/her home school IEP.
- d. School-Aged: Intermediate-Term - This term refers to an admission period of two or more weeks, but less than a full school year.
 - 1) Home-School Communication
 - a) The hospital teacher contacts school personnel to inform them of the child's admission after the child has been seen for three days of instruction.
 - b) Ongoing contact with the child's teacher or guidance counselor is maintained during the period of hospitalization in order to obtain additional assignments and to ascertain the child's progress in relation to his/her class.
 - c) In correspondence with the grading periods of the child's home school, the teacher sends progress reports to the parent, with copies to home school personnel.
 - 2) Referral
 - a) Upon initial admission the child's academic performance is informally assessed and existing data reviewed. Children identified as having problems in the educational setting are referred to the school-based team.
 - b) Based upon the school-based team's findings and the child's medical status, a referral is made to the education director or designee on any child suspected of having a disability. In addition, a child may be referred directly to the education director for evaluation without convening the school-based team.
 - c) The education director or designee initiates the process for determining the child's eligibility for special education and related services.
 - 3) Individual and Group Instruction
 - a) The teacher assists the child in completing assignments from his/her home school.
 - b) For a child identified as needing special education and related services prior to admission, the teacher requests the home school IEP. Upon its receipt, the teacher notifies the education director or designee so that a meeting can be scheduled to modify and implement the child's IEP in a timely manner.
 - c) When appropriate, the teacher discusses the instructional program with the student and encourages student participation in program planning.
 - d) Programs for remediation of academic problems are designed when necessary.
 - e) For a child not identified as needing special education prior to admission, the teacher, in cooperation with the IEP team, develops an IEP upon determination of eligibility.
 - f) Tutors are secured, as needed, for students taking advanced-level courses; otherwise, curriculum options are comparable to those provided in public schools.
 - g) When appropriate, the teacher assigns grades.

- e. School-Aged: Long-Term - This term refers to an admission whereby children are placed long-term in a SOP for non-educational reasons. For these children, the individual child's LEA of residence continues to be responsible for the provision of a FAPE in the least restrictive environment (LRE). The SOP is required to notify the appropriate LEA of the admission and status of long-term students as well as any meetings associated with the child receiving a FAPE.
- f. Creative Arts - Art and music therapists work for the HEP within the facility in which the program resides. They are not required to have endorsements in art or music education but must hold certification by their licensing board or be working toward certification.

As faculty members of public school programs, art and music therapists are required to offer a free education to all students. Therefore, art and music enrichment through therapeutic means is available to all students. Students needing individual counseling will be referred to the appropriate facility staff. Art and music therapists may meet with students in a group or individually. Students who participate in art enrichment do not receive grades due to the therapeutic nature of the program. If, however, a student is taking an art or music class for credit, the therapist may work with the home school and/or facility teachers to ensure that the necessary curriculum is covered and graded.

- 1) Art Therapy: The goal of art therapy in SOPs is to create a safe and creative environment for the students to express their thoughts, energies, and behavior in a positive manner that may
 - a) encourage student awareness of their thoughts and actions;
 - b) decrease impulsivity and increase frustration tolerance;
 - c) increase self-empowerment through the creative process;
 - d) encourage independence and individuality;
 - e) improve respect for others;
 - f) encourage social interaction and cooperative behavior;
 - g) provide experiences that help a student gain insight;
 - h) emphasize the unique abilities of each student;
 - i) support student academic experiences;
 - j) provide experiences that will enhance problem-solving skills;
 - k) foster relaxation and coping skills; and
 - l) encourage identification and expression of feelings.

Art experiences may include but are not limited to art making, illustrations, sculptures, mixed media, painting, graphic designs, crafts, games, virtual field trips, art relaxation techniques, music listening, creative analysis, creative writing, and photography/film.

- 2) Music Therapy: The goal of music therapy in SOPs is to create an environment that enables all students to participate in a variety of music experiences that may
 - a) increase self-awareness;
 - b) improve reality testing and problem-solving skills;
 - c) improve respect for others, including peers and authority figures;
 - d) develop healthy verbal and nonverbal communication skills;
 - e) decrease impulsivity through practical techniques;
 - f) promote acceptance of responsibility for thoughts, feelings, and actions;
 - g) teach relaxation and coping skills;
 - h) develop effective leisure skills;

- i) allow for exploration of feelings and positive changes in mood states;
- j) foster positive group dynamics;
- k) assist the student in valuing education; and
- l) create a positive environment.

Music experiences may include but are not limited to music making/improvisation, songwriting/CD creating, lyric analysis, music listening, creative arts, music-assisted relaxation, games, music appreciation, virtual field trips, music lessons, music-facilitated art expression, and story writing.

- g. Other Services - The following services also assist in providing a full educational opportunity for children during their hospitalizations.
 - 1) Career education objectives are infused into the curriculum for students, ages 2 to 21, inclusive. Depending on the age range, disabilities, and medical conditions of the children, weekly career education classes may be scheduled with the emphasis varying from beginning career awareness to the exploration of specific vocations. Given the nature of the medical setting, a full vocational education program cannot be offered.
 - 2) Physical education services are often not appropriate given the nature of children's specialized hospitals or are provided by Recreation Therapy. Where physical education services are offered to all children in particular grades, children with disabilities are afforded physical education, specially designed if necessary, that allows them to participate with age-appropriate peers as part of their FAPE entitlement. It follows that, even when physical education is not provided to other children without disabilities in the same grades, these services are provided where possible in the hospital setting to a child who needs a specially designed program as delineated in his/her IEP.
 - 3) According to needs specified on children's IEPs, short-term objectives that focus on self-help skills, socialization training, and independent living are included. The goal is to develop and maintain competencies which promote a positive and realistic concept of self and others, as well as teach students to maintain their personal area.
 - 4) Subject to their medical status, all children have access to the nonacademic activities available during their hospital admissions. Teachers arrange and help to supervise extracurricular programs designed to stimulate and involve students.

III. Conditions of Employment

- A. **Certification/Endorsement** - Each state board, agency, or institution shall assign personnel to the educational program as follows: administrative, supervisory, instructional, support, and ancillary personnel holding valid professional licenses, certificates, and endorsements as appropriate in the area of assignment (national standards may apply in the absence of state licensure or certification requirements).

It follows that the HEPs shall ensure that special education personnel, including paraprofessionals, have the content knowledge and skills to serve children with disabilities. To achieve this objective, the HEPs take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services to students with disabilities. It follows that under the No Child Left Behind Act of 2001, all instructional assistants must be highly qualified paraprofessionals. This standard requires that all instructional assistants be high school graduates and have passed the ParaPro Assessment.

Additional education personnel, such as occupational therapists, physical therapists, and interpreters for the deaf, hired to provide required related services, must also hold valid professional licenses, certificates, and endorsements.

- B. Contracts** - Teaching contracts shall be drawn in compliance with the laws of the Commonwealth of Virginia and requirements of the Virginia Board of Education. They may include any special provisions approved by the employing school board in conjunction with the annual memoranda of understanding between local school divisions and the VDOE.
- C. Dismissal** - According to the *Code of Virginia* (22.1-307), any teacher may be dismissed or placed on probation for incompetency, immorality, noncompliance, conviction of a felony, or other good and just cause. Local policies may specifically delineate other causes for dismissal. Appeal and notification procedures are determined locally.
- D. Evaluation** - Per the Commonwealth of Virginia Board of Education Guidelines, each school division is required to establish and maintain procedures for the evaluation of all employees. The purpose of such evaluation and assistance shall be to raise the quality of instruction and educational services and aid the individual employee to grow and improve. Since HEP professional staff and paraprofessionals are employed through local school divisions, evaluation shall be a cooperative and continuing process with formal appraisal periodically, according to the procedures delineated by the local school division. Assistance will be provided by the VDOE upon request.

Staff members hired by the Commonwealth of Virginia will be evaluated by their immediate supervisor according to the established procedures of the facility.
- E. Grievance Procedure** - HEP personnel will follow the grievance procedure of the employing school division. The full text of the grievance procedure can be found in the school board policy manual of the employing school division.
- F. Hours and Lengths of Contracts** - HEP employees adhere to the length of the contractual day and hours established by the local school division. The VDOE reserves the right to adjust the school calendar and contracts to accommodate the needs of the state department and the medical facility in which an HEP is located.
- G. Inclement Weather** - All staff employed by the local school division and assigned to a medical facility shall follow the inclement weather procedure developed by the particular HEP in cooperation with the employing school division.
- H. In-services/Staff Development/Conferences** - For SOP personnel, this policy supersedes all local school division policies regarding attendance at in-services and conferences.

Each SOP shall provide an ongoing staff development program for general and special education instructional personnel as well as support personnel. Accordingly, the HEPs plan, implement, and evaluate in-service training aimed at addressing the needs of children in residence and increasing student achievement. It follows that staff are expected to attend those in-services organized by the HEP or the VDOE for HEP personnel.

The HEPs encourage the participation of staff in job-related professional programs and activities whose purposes support the improvement of the education program. If schedules allow, HEP personnel have an opportunity to participate in workshops or in-services offered by the VDOE, the local school division, and the facility.

Opportunities to attend in-services and conferences focused on job-related topics are made available to individual staff upon request. Recognizing that the mission of the HEPs is to provide direct service to children and that resources are limited, a maximum of two individuals from any one HEP may attend a particular in-service or conference. Likewise, each staff member may be approved to attend up to two in-services or conferences per school year. Any exceptions must be approved by the education director and the VDOE.

It is the responsibility of any individual desiring to serve on a conference planning committee or submitting a proposal for a presentation to get approval from the education director prior to making commitments. While individuals planning to make presentations at in-services or conferences will be given priority, it should be understood that they will not automatically be granted permission to attend.

With regard to attendance at in-state and out-of-state in-services and conferences, HEP staff participation must conform to current state regulations and guidelines. Travel the night before an in-service or conference may be considered if the program is scheduled to begin at or before 9:00 a.m. and more than two hours of travel is entailed. Exceptions may be granted for individuals serving on an in-service or conference planning committee if the need for last-minute planning/coordination is documented.

While leave time may be granted to attend a conference or in-service, such approval in no way obligates the HEP or the VDOE to defray the conference- or in-service-related costs of the participant. In many cases, it may be necessary for the individual participant to defray some part or all of the associated expenses.

Documentation of HEP staff development is to be kept in the education director's or designee's office.

- I. **Personnel Policies** - All personnel employed by local school divisions and assigned to HEPs are responsible for adhering to all rules, regulations, and statutes pertaining to facility policies and to those of the local school division.

HEP employees are expected to abide by the specific rules and regulations of the facility relative to patient treatment, as outlined in the facility's policy manual. In the event of personnel policy violations, HEP personnel will be subject to the same disciplinary action as employees of the facility, with the exception that during a secondary investigation an HEP staff member may be temporarily reassigned to a position outside of the facility by the VDOE in lieu of suspension until the investigation is completed.

- J. **Reduction in Force (RIF)** - The termination or reduction of state funding for the HEPs may entitle the local school division to terminate the contracts of administrative and teaching personnel for insufficient funds, subject to the specific agreement made between the school board and the employee of the school board. Furthermore, the termination or reduction of local funding for the school division may not entitle the school board to terminate the contracts of HEP personnel, subject to the specific agreement made between the school board and the employee of the school board.

- K. **Staff/Patient Relationships** - Staff/patient relationships are to be professional, not personal.

- 1. **Financial Transactions** - Employees are prohibited from selling items to patients. Employees may only buy goods from patients as a part of a hospital-approved activity, such as an arts and crafts show or bake sale. It is prohibited for a staff member to gamble with, bet with, borrow from, or loan money to a patient.

2. **Gift Giving and Receiving** - Gifts to patients should be made as a donation with the nursing unit director's approval and made through the particular HEP. Gifts from the patient or family must be reported to the education director to determine what action should be taken. The receipt of money from a patient or family is prohibited. Gifts of material value may be donated to the unit, HEP, or volunteer services.
3. **Personal Relationships** - Developing relationships that are not considered professional with patients and/or parents is prohibited. Employees, on their days off, shall not make or receive telephone calls to/from patients or parents.

Staff members shall address patients with courtesy and respect. When a patient asks a question or makes requests that staff cannot answer or grant within their job description, they shall refer the patient to the education director or the nursing unit director.

4. **Reporting Suspected Abuse, Neglect, and Misconduct** - In cases of observed or suspected physical abuse, neglect, and misconduct in which a patient or family member is involved, all incidents should be reported to the education director. Likewise, complaints from patients or family made to an HEP staff member should be reported to the education director.
 5. **Staff Visitation, Field Trips, and Outside Activities** - In order for staff to participate in such activities with patients during off-duty hours, they must seek approval from the education director and nursing unit director and obtain written permission from the patient's parent. For liability purposes staff should also be registered with the facility's volunteer office. If staff members are participating in activities with patients to whom they are assigned, the activity must be an established or special programmatic activity.
- L. **Standard Precautions** - Infectious disease control poses special concerns for personnel in specialized children's hospitals. It is necessary that prudent precautions be taken for protection against transmission of infectious diseases and also that the responsibilities of staff in health care centers be defined. As required by Occupational Safety and Health Administration (OSHA) and Virginia Occupational Safety and Health Administration regulations, health care workers shall at all times observe universal precautions with respect to the treatment and care of all patients. Health care workers not adhering to the currently accepted infection control policy of the institution may be held legally liable for injury incurred by patients and can be sued.

Given their level of involvement with children in the health care system, it follows that all personnel employed by local school divisions and assigned to HEPs are identified according to the above referenced regulations as being health care workers. HEP staff must also be accountable for universal precautions compliance regarding all students. Per OSHA and Virginia Occupational Safety and Health Administration standards, new HEP employees who have the potential to be exposed to human blood, body fluids or tissue, or air contaminated with *Mycobacterium tuberculosis* must complete Standard Precautions and Infection Control training prior to starting patient care duties or engaging in any other activity which may result in exposure. Retraining on standard precautions/infection control is provided to HEP staff at least annually, with appropriate documentation of training and retraining maintained by the education director for at least three years.

As part of the standard precautions/infection control orientation, HEP employees receive additional information about the Hepatitis B vaccine and shall be offered free inoculations. In the event an HEP employee declines the vaccine, a declination form must be completed.

If a hospital teacher or educational consultant has an exposure to blood or other body fluids, that staff member shall immediately go to the occupational health department or, if that department is closed, to the emergency room. It is also the responsibility of the employee to report the incident, using the facility's quality report system.

- M. Student-Teacher Ratios** - All facilities are required to staff the educational programs as specified by state regulations. With regard to instructional personnel, the HEPs adhere to established student-teacher ratios for the types of children with disabilities being served. Both regular and special education students receive instruction in the HEPs. While no specific ratio of instructional personnel is required for regular students, education directors endeavor to provide essentially the same ratio of teachers to students as is applied to the disabled population, due to the one-to-one teaching arrangements often necessitated by children's medical conditions. Student/teacher ratios are monitored on a monthly basis by the VDOE.
- N. Systems of Communication** - Multiple forums exist within each employing local school division and specialized children's hospital, whereby the views of all educational personnel may be received in an orderly and constructive manner. In addition, HEP staff members are encouraged to share their views with the education director on an ongoing basis. Depending on the nature of the matter, a decision can then be made as to whether it should be brought to the attention of the facility or the local school division. If the topic involves a personnel matter, the employing school division will be contacted. If, however, it involves patient care, the matter will be brought to the attention of the institution. Matters concerning special education policy and procedures are most appropriately pursued with the VDOE representative responsible for SOPs. In all matters the VDOE representative responsible for SOPs is kept informed as appropriate.
- O. Travel** - All approved HEP travel is reimbursed according to local school division policy unless federal grant money is being used to underwrite the travel. In cases where federal monies are used, the state reimbursement rate must be followed.

IV. Definitions

- A. Age of Eligibility** - Eligible children are those children with disabilities who have not graduated with a standard or advanced studies high school diploma who, because of such disabilities, are in need of special education and related services, and whose second birthday falls on or before September 30, and who have not reached their 22nd birthday on or before September 30 (two to 21, inclusive) in accordance with the *Code of Virginia*. A child with a disability whose 22nd birthday falls after September 30 remains eligible for the remainder of the school year.
- B. Alternate Assessment** - The term "alternative assessment" refers to the state assessment program for measuring student performance against alternate achievement standards for students with significant intellectual disabilities who are unable to participate in statewide Standards of Learning testing, even with accommodations.
- C. Assistive Technology Device** - The term "assistive technology device" refers to any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted or the replacement of such a device.

D. Behavioral Intervention Plan - A “BIP” utilizes positive behavioral interventions and supports to address behaviors that interfere with the learning of students with disabilities or with the learning of others or behaviors that require disciplinary action.

E. Change in Placement - The term “change in placement” means when the local educational agency (LEA) places a child in a setting that is distinguishable from the educational environment to which the child was previously assigned. It includes

1. the child’s initial placement from general education to special education and related services;
2. the expulsion or long-term suspension of a student with a disability;
3. the placement change which results from a change in the identification of a disability;
4. the change from a public school to a private day, residential, or SOP; from a private day, residential, or SOP to a public school; or to a placement in a separate facility for educational purposes;
5. termination of all special education and related services; or
6. graduation with a standard or advanced studies high school diploma.

A change in placement for a child with a disability also means any change in the educational setting that does not replicate the elements of the educational program of the child’s previous setting.

For the purposes of discipline, change in placement refers to

1. removal of a student from the student’s current educational placement that is for more than 10 consecutive school days; or
2. the student who is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year and because of factors, such as the length of each removal; the child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in a series of removals; the total amount of time the student is removed; or the proximity of the removals to one another.

F. Child - The terms “child,” “children,” and “student” are used interchangeably and refer to child/children with a disability.

G. Child with a Disability - A child with a disability is a child who, through appropriate evaluation, is determined to have one or more of the following disabilities and who, by reason thereof, needs special education and related services.

1. Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3 that adversely affects a child’s educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. A child who manifests the characteristics of autism after age 3 can still be diagnosed as having autism.
2. Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.
3. Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child’s educational performance.

4. Developmental Delay means a disability affecting a child who is two years old by September 30 through six years of age inclusive, who is
 - a. (i) experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development, or (ii) who has an established physical or mental condition that has a high probability of resulting in developmental delay;
 - b. the delay(s) is not primarily a result of cultural factors, environmental or economic disadvantage, or limited English proficiency; and
 - c. the presence of one or more documented characteristics of the delay has an adverse affect on educational performance and makes it necessary for the student to have specially designed instruction to access and make progress in the general educational activities for this age group.

A child in this age range cannot be limited to identification with developmental disability if the student can be determined eligible under another disability. And, no LEA is required to adopt and use developmental disability as a category for any child within its jurisdiction.
5. Emotional disability is defined as being a condition where one or more of the following characteristics are exhibited over a long period of time and to a marked degree that adversely affects a child's educational performance:
 - a. an inability to learn that cannot be explained by intellectual, sensory, or other health factors;
 - b. inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
 - c. inappropriate types of behavior or feelings under normal circumstances;
 - d. a general pervasive mood of unhappiness or depression; and
 - e. a tendency to develop physical symptoms or fears associated with personal or school problems.

The term includes schizophrenia but does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.
6. Hearing impairment means impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness.
7. Intellectual disability is defined as significantly sub average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.
8. Multiple disabilities means concomitant impairments (such as intellectual disability-blindness, intellectual disability-orthopedic impairment, etc.) the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.
9. Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).
10. Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment and adversely affects a child's educational performance. Other health impairments may be due to chronic or acute health problems, such as arthritis, asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, tuberculosis, and Tourette syndrome.

11. Specific learning disability is defined generally as a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.
12. Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, language impairment, or a voice impairment, that adversely affects a child's educational performance.
13. Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative or to brain injuries induced by birth trauma.
14. Visual impairment including blindness means impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

If it is determined through an appropriate evaluation that a child has one of the above defined disabilities, but only needs a related service and not special education, that child is not a child with a disability. If, however, the related service required by the child is considered special education rather than a related service under state standards, the child would be determined to be a child with a disability.

H. Consent - The term "consent" means

1. the parent or eligible student has been fully informed of all information relevant to the activity for which consent is sought in the parent's or eligible student's native language or other mode of communication;
2. the parent or eligible student understands and agrees, in writing, to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
3. The parent or eligible student understands that the granting of consent is voluntary on the part of the parent or eligible student and may be revoked at any time.

I. Core Academic Subjects - The term "core academic subjects" means English, reading/language arts, mathematics, science, foreign languages, civics/government, economics, arts, history, and geography.

J. Day; Business Day; School Day - The term "day," "business day," and "school day" are defined as follows.

1. Day means calendar day unless otherwise indicated.
2. Business day means Monday through Friday, except for federal and state holidays (unless holidays are specifically included in the designation of business days); and
3. School day means any day, including a partial day that children are in attendance at a school for instructional purposes. This term has the same meaning for all children in school, including children with and without disabilities.

K. Free Appropriate Public Education (FAPE) - “Free appropriate public education” means special education and related services that

1. are provided at public expense, under public supervision and direction, and without charge;
2. meet the standards of the Virginia Board of Education;
3. include an appropriate preschool, elementary school, or secondary school education in the state; and
4. are provided in conformity with the child’s Individualized Education Program (IEP).

Children are entitled to a FAPE regardless of citizenship or immigration status.

Children with disabilities who are eligible to receive special education and related services in accordance with Section 619 of Part B of IDEA, but who instead receive early intervention services under Part C of IDEA, are not entitled to a FAPE.

Children with disabilities who have graduated from high school with a regular high school diploma are no longer entitled to a FAPE. “Regular” diploma means “standard” or “advanced students diploma.” However, a child’s FAPE entitlement is not terminated by the child’s receipt of an alternative degree (GED, Modified Standard Diploma, or Special Diploma) that is not fully aligned with Virginia’s academic standards.

L. Functional Behavioral Assessment (FBA) - A “functional behavioral assessment” means a process to determine the underlying cause or functions of a child’s behavior that impede the learning of the child with a disability or the learning of the child’s peers. As determined by the HEP team, it includes a review of existing data or new testing data or evaluation.

M. General Curriculum - The term “general curriculum” means the same curriculum used with children without disabilities adopted by a LEA, schools within the LEA, or, where applicable, the VDOE for all children from preschool through secondary school. The term relates to content of the curriculum and not to the setting in which it is taught.

N. Highly Qualified Special Education Teacher - The term “highly qualified special education teacher” means a teacher has met the specified requirements for special education teachers in general, for special education teachers teaching core subjects, for special education teachers teaching to alternate achievement standards, or for special education teachers teaching multiple subjects as it applies to their teaching assignment.

O. Homeless Children and Youth - The term “homeless children and youth” means individuals who lack a fixed, regular, and adequate nighttime residence. This definition includes children and youth who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement. Further, the term applies to children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings; children who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and certain migratory children who qualify as homeless because of their living circumstances.

- P. Immigrant Students and Youth** - The term “immigrant students and youth” refers to those individuals (aged 3 through 21) who were not born in the United States and who have not been attending one or more schools in any one or more states for more than three full academic years.
- Q. Infant and Toddler with a Disability** - The term “infant and toddler with a disability” refers to a child, ages birth to two, inclusive, whose birthday falls on or before September 30, or who is eligible to receive services in the Part C early intervention system up to age three, and who has delayed functioning; manifests atypical development or behavior; has behavioral disorders that interfere with acquisition of developmental skills; or has a diagnosed physical or mental condition that has a high probability of resulting in delay, even though no current delay exists.
- R. Interpreting Services** - The term “interpreting services” when used with respect to children who are deaf or hard of hearing means services provided by qualified personnel and includes oral transliteration services, cued speech/language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and interpreting services for children who are deaf-blind. A child who is not deaf or hard of hearing, but who has expressive or receptive language deficits, may receive interpreting services as directed by the child’s IEP.
- S. Limited English Proficient (LEP)** - The term “limited English proficient,” when used with respect to an individual, means an individual
1. who is aged 2 through 21;
 2. who is enrolled or preparing to enroll in an elementary or a secondary school;
 3. who was not born in the United States or whose native language is a language other than English;
 - a. who is a Native American or Alaska Native, or a native resident of the outlying areas; and
 - b. who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or
 - c. who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and
 4. whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual
 - a. the ability to meet the state's proficient level of achievement on state assessments;
 - b. the ability to achieve successfully in classrooms where the language of instruction is English; or
 - c. the opportunity to participate fully in society.
- T. Local Educational Agency (LEA)** - The term “local educational agency” means a local school division governed by a local school board, a SOP that is funded and administered by the Commonwealth of Virginia, or the Virginia School for the Deaf and the Blind. Neither SOPs nor the Virginia School for the Deaf and the Blind are considered school divisions as that term is used in Virginia Regulations.
- U. Long-term Placement** - If used in reference to SOPs, the term “long-term placement” means those hospital placements that are not expected to change in status or condition because of the child’s medical needs.

- V. Manifestation Determination Review (MDR)** - The term “manifestation determination review” means a process to review all relevant information and the relationship between the child’s disability and the behavior subject to the disciplinary action.
- W. Migrant Student** - A child whose parent or spouse is a migratory agricultural worker, including a migratory dairy worker or a migratory father who, in the preceding 36 months, in order to obtain or accompanying such parent or spouse in order to obtain, temporary or seasonal employment in agricultural or fishing work
1. has moved from one school division to another;
 2. in a state that is comprised of a single school division, has moved from one administrative area or another within such division; or
 3. resides in a school division of more than 15,000 square miles and migrates a distance of 20 miles or more to a temporary residence to engage in a fishing activity.
- X. National Instructional Materials Accessibility Standard (NIMAS)** - The National Instructional Materials Accessibility Standard refers to the standard established by the U.S. Secretary of Education to be used in the preparation of electronic files suitable and used solely for efficient conversion of print instructional materials into specialized formats.
- Y. Native Language** - The term “native language,” when used with reference to an individual of limited English proficiency, means the language normally used by the individual, or, in the case of a child, the language normally used by the parent of the child.
- Z. Notice** - The term “notice” means written statements in English or in the primary language of the home of the parent, or, if the language or other mode of communication of the parent is not a written language, oral communication in the primary language of the home of the parent. If an individual is deaf or blind or has no written language, the mode of communication would be that normally used by the individual (such as sign language, Braille, or oral communication).
- AA. Parent** - The term “parent” means
1. a biological or adoptive parent of a child;
 2. a foster parent, even if the biological or adoptive parent’s rights have not been terminated, unless the biological or adoptive parent attempts to act as the parent, in which case that individual must be presumed to be the parent unless the residual parental rights and responsibilities of the individual biological or adoptive parent have been terminated;
 3. a guardian generally authorized to act as the child’s parent or authorized to make educational decisions for the child (but not a guardian ad litem or the Commonwealth if the child is a ward of the Commonwealth);
 4. an individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative, with whom the child lives, or a person who is legally responsible for the child’s welfare;
 5. a surrogate parent who has been appointed in keeping with the regulations if no party qualified under the above subdivisions can be identified;
 6. an emancipated minor;
 7. a validly married minor who has not pursued emancipation who asserts implied emancipation based on the minor’s marriage record; or
 8. noncustodial parents whose parental rights have not been terminated.

If a judicial decree or order identifies a specific person or persons among one of the above subdivisions to act as the “parent” of a child or make educational decisions on behalf of a child, then such person or persons shall be determined to be the “parent” for purposes of special education identification, evaluation, and placement of a child and the provision of a FAPE.

Notably, in situations where there is a guardian ad litem, such guardians have limited appointments which do not allow them to act generally as the parent of the child. It follows that they are not allowed to make educational decisions for the child.

BB. Refugee Student - An individual who is outside his/her country and is unable or unwilling to return to that country because of a well-founded fear that he/she will be persecuted because of race, religion, nationality, political opinions, or membership in a particular social group. This does not include persons displaced by natural disasters or persons who, although displaced, have not crossed an international border or persons commonly known as “economic migrants,” whose primary reason for flight has been a desire for personal betterment rather than persecution.

CC. Related Services - The term “related services” means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education and includes speech-language pathology and audiology services; interpreting services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling; orientation and mobility services; and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services; social work services in school; and parent counseling and training. The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music, and dance therapy), if they are required to assist a child with a disability to benefit from special education.

Children with medical devices (e.g., cochlear implant) that are surgically implanted are entitled to those related services which the IEP team determines are necessary for a FAPE. It should be noted, however, that, with regard to a medical device that is surgically implanted, the term “related services” does not apply to the optimization of device functioning (e.g., mapping), maintenance of the device, or the replacement of that device. The LEA is responsible for checking the external component of a surgically implanted device routinely to make sure it is functioning properly. Further, it remains the responsibility of the LEA to appropriately monitor and maintain medical devices that are needed to maintain the child’s health and safety, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school.

DD. Scientifically Based Research - The term “scientifically based research” means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education. It includes research that

1. employs systematic, empirical methods that draw on observation or experiment;
2. involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;
3. relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;
4. is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;

5. ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and
6. has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

EE. Services Plan - The term “services plan” refers to a written statement developed by an LEA; it describes the special education and related services that an LEA will provide to parentally-placed private school children with disabilities who have been designated to receive equitable services.

FF. Supplementary Aids and Services - The term “supplementary aids and services” means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with children without disabilities to the maximum extent appropriate in accordance with LRE requirements. Such supports are also provided in extracurricular and nonacademic settings.

GG. Universal Design - The term “universal design” means a concept or philosophy for designing and delivering products and services usable by people with the widest possible range of functional capabilities; included are products and services that are directly usable (without requiring assistive technologies) as well as products and services that are made usable with assistive technologies.

HH. Ward of the State - The term “ward of the state” means a child who, as determined by the state where the child resides, is a foster child, is a ward of the state, or is in the custody of a public child welfare agency. The term does not include a foster child who has a foster parent who meets the definition of a parent.

V. Individualized Family Service Plans (IFSPs) - Specific requirements for the development and implementation of IFSPs are found in the amendments to Public Law 105-17 (1997).

A. Evaluation and Assessment - For each infant or toddler with a disability and his/her family, the HEPs shall provide

1. a multidisciplinary assessment of the unique strengths and needs of the child and the identification of appropriate services;
2. a family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports/services necessary to enhance the family's capacity to meet the child's developmental needs; and
3. a written IFSP developed by a multidisciplinary team, including the parent, within 45 days after the referral is received.

B. Review of the IFSP - The IFSP shall be evaluated at least annually. In addition, a review of the plan shall be provided at 6-month intervals (or more often where appropriate based upon the needs of the child and family) for the family.

C. Promptness After Assessment - The IFSP shall be developed within the required time period. It is acceptable, however, that with the parent's consent, an interim IFSP may be developed and early intervention services may commence for an eligible child prior to the completion of the assessment.

D. Content of the IFSP - The IFSP must include

1. a statement of the infant's/toddler's present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on objective criteria;
2. a statement, with the family's permission, of their resources, priorities, and concerns related to enhancing the development of the family's infant/toddler with a disability;
3. a statement of the major outcomes expected to be achieved for the child and the family, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary;
4. a statement of specific early intervention services necessary to meet the unique needs of the child and the family, including the frequency, intensity, and method of delivering services;
5. a statement of the natural environments in which early intervention services shall appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment;
6. the projected dates for initiation of services and the anticipated duration of the services;
7. the identification of the service coordinator from the profession most immediately relevant to the child's or family's needs to be responsible for the implementation of the plan and coordination with other agencies and persons; and
8. the steps to be taken to support the transition of the toddler with a disability to preschool or other appropriate services.

E. Parental Consent - The contents of the IFSP shall be fully explained to the parent, and informed consent shall be obtained prior to the provision of early intervention services as detailed in the plan. If the parent does not provide consent with respect to a particular intervention service, then only those services for which consent is obtained shall be provided.

F. Transition - For toddlers receiving early intervention services, it is the responsibility of the HEPs to ensure a smooth transition to preschool or other appropriate services.

Having informed the parent and the child's LEA that the child shall soon reach the age of eligibility (age two on or before September 30) for preschool services, the HEPs shall, with the approval of the child's family,

1. for a child who meets the requirements to be determined eligible for preschool services under Part B, invite the family and appropriate LEA personnel to a transition planning conference at least 90 days before and not more than 9 months before the child is eligible for preschool services. The purpose of this meeting shall be to discuss any preschool services which the child may receive and develop a plan to support the toddler with a disability in moving to a preschool or other appropriate services. It follows that the HEPs, working collaboratively with the parent, LEA personnel, and Part C service coordinator, shall proceed by the child's second birthday to develop an IEP for such child, taking into consideration the content of the IFSP; or
2. for a child who may not be eligible for such preschool services, invite the family and providers of other appropriate services to a conference. The purpose of this meeting shall be to discuss appropriate services that the child may receive.

At times, it may be necessary to discuss the child's program options for the period from the child's second birthday through the remainder of the school year. Likewise, for a child served by Part C after age two and whose third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP will begin.

The HEPs are not obligated to provide a FAPE to children who are eligible under IDEA Part B whose parents choose for them to continue to receive services under IDEA Part C.

- G. Due Process for a Child Ineligible Under Part C** - In the event there is a due process hearing involving an application for initial services under Part B for a child who is no longer eligible under Part C, the HEP is not required to continue providing the early intervention services on the child's IFSP. If a child is eligible under Part B and the parent consents, the HEP must provide those special education and related services that are not in dispute.

VI. Identification, Evaluation, and Eligibility - For students suspected of being disabled or who are disabled and enrolled in HEPs, the timelines in Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities; Final Rule as printed in the Federal Register on December 1, 2008, apply. The following procedures are to be followed.

- A. Child Find** - All children, ages birth to 21, are entitled to HEP services upon admission. The education director or designee systematically identifies and locates new patients daily via the hospital's computer system. Every child receives educational services unless the parent declines services or the child's medical condition indicates the necessity for a waiver.

To ensure that all children who are in need of special education and related services are identified, located, and evaluated, the HEPs communicate with parents, nursing staff, and other multidisciplinary team members, informing them of the availability of special education programs and services and of children's statutory right to a FAPE. All public awareness communications are documented. HEP staff members also explain the nature of disabilities, the early warning signs of disabilities, and the need for early intervention. Emphasis is placed on identifying

1. children who are highly mobile (such as migrant or homeless children);
2. children who are suspected of being disabled and in need of special education even though they have not failed or been retained in a course or grade and are advancing from grade to grade or have received a GED;
3. children who have been expelled or suspended;
4. children with disabilities served in a charter school in accordance with the *Code of Virginia*;
5. children with disabilities attending private schools, including children who are home instructed or home tutored; and
6. children, including wards of the State, who are not home schooled or attending a private school.

When necessary, arrangements are made to provide this information in the person's native language or primary mode of communication.

Notably, children who have previously been IDEA-eligible should not be treated any differently for child find purposes. A parent, however, may refuse to provide consent for an initial evaluation.

Preschool-aged children with disabilities are not eligible for special education and related services if they are receiving early intervention services under Part C. Also, parents who place their children in private schools have the option of not participating in the HEPs' child find activities; however, the HEPs should extend the offer to reevaluate these students.

B. Screening - Screening is the responsibility of the LEAs in which children reside.

- C. School-Based Team** - The school-based team enables HEP personnel and nonschool personnel, as appropriate, to meet the needs of individual children who are having difficulty in the educational setting. The team reviews the reason for the referral, the child's records, and other performance evidence or data to make recommendations to meet the educational and/or behavioral needs of individual children. The team may
1. determine that the referral for special education and related services is not needed, noting that the child is performing adequately;
 2. recommend interventions with prescribed review dates; or
 3. refer the child for a special education evaluation.

Membership on the team includes the education director or designee, who chairs the team; the referral source, as appropriate (except if such inclusion would breach the confidentiality of the child); the child's hospital teacher; and at least one specialist. The team may also include the child's parent as well as other professionals with specialized knowledge when the HEP determines that the special needs of a child dictate that additional information be provided. One member of the team must be knowledgeable about alternative interventions and procedures required to access programs and services that are available to assist with the child's educational needs.

Children, regardless of whether they are enrolled in public school, may be referred through a screening process or by school staff, the parent, or other individuals. Referrals are made to the education director or designee and may be in written, electronic, or oral form.

If the administrator asks the school-based team to review the child's referral, the team may use a response-to-intervention (RTI) approach for identifying recommended strategies that are research-based and gather data regarding the student's response to the applied intervention. The team can then schedule regular meetings to discuss the data and the student's progress and to determine if additional interventions are needed. It is the responsibility of the team to ensure that these interventions are documented and do not interfere with or needlessly delay a child suspected of having a disability from being evaluated for special education and related services. In fact, the educational evaluation may be administered concurrently with team-recommended interventions. If the child has not made adequate progress after an appropriate period of time during the implementation of the interventions, the team shall refer the child to the education director or designee for an evaluation to determine if the child needs special education and related services.

The school-based team meets within 10 business days of receipt of a referral. The team shall refer a child to the education director or designee within 3 business days if the team determines that the child should be referred for an evaluation for special education and related services. Should, however, the team decide against such a referral, the parent is provided with prior written notice, indicating that the evaluation was refused, the reasons for the decision, a description of other options the team considered and reasons why they were not accepted, a description of the evaluation information (each evaluation procedure, assessment, record, or report) used to make the decision, any other factors relevant to the team's decision, and the parent's right to appeal the decision through due process hearing procedures. The parent is also given a copy of his/her procedural safeguards.

All actions by the school-based team are documented in writing and include information upon which the decision was made. Such documentation is maintained in the student's file. It follows that minutes of team meetings are maintained by the chair.

D. Referral for Formal Evaluation - When a child is suspected of having a disability, a referral is made to the education director or designee. Referrals can be made by any source, including a parent, HEP staff, home school LEA, the VDOE, any other state agency, other individuals, or the school-based team. The referring party shall inform the education director or designee of the reason(s) for requesting the evaluation and the efforts that have been made to address the concern. The referral may be made in oral or written/electronic form

Upon receipt of a referral from a source other than the school-based team, the education director or designee shall ensure that the referral is documented on a referral form and included in the child's student file. The education director or designee has three days to decide upon one of the following options:

1. initiate the initial evaluation process;
2. refer the child to the school-based team to review and respond; or
3. deny the request and provide prior written notice.

If the referral is made by a parent, the parent will be notified of the decision.

It is the responsibility of the director or designee to

1. record the date, reason for referral, and name(s) of the person/agency making the referral;
2. implement procedures for maintaining the confidentiality of all data;
3. provide written notice and procedural safeguards to the parent in his/her native language or primary mode of communication unless it is clearly not feasible to do so about
 - a. the referral for evaluation;
 - b. the purpose of the evaluation; and
 - c. parental rights with respect to evaluation and other procedural safeguards;
4. inform the parent of the procedures for the determination of needed evaluation data and request any evaluation information the parent may have;
5. secure informed consent from the parent for the evaluation;
6. identify the evaluations to be administered and ensure that they all consist of procedures that
 - a. gather relevant functional, developmental, and academic information about the child to determine if he/she is a child with a disability; and
 - b. are sufficiently comprehensive to identify all of the child's special education and related services needs and educational needs; and ensure that all evaluations are completed and that decisions about eligibility are made within 65 business days of receipt of the referral by the education director or designee, including if the referral was routed to the school-based team for review and action.

The parent and the eligibility group may agree in writing to extend the timeline to obtain additional data that cannot be obtained within the 65 business days. Such agreements must be in writing.

The written permission of the parent for evaluation shall not be construed as consent for initial placement for special education and related services. It is the HEP's responsibility to make reasonable efforts to obtain parental consent for an initial evaluation. If a parent refuses consent for evaluation or fails to respond to a request to provide consent, the HEP may, but is not required to, use dispute resolution options of mediation or due process to pursue the initial evaluation. Of note is the fact that the HEP does not violate its obligation under child find or other FAPE provisions if it declines to pursue the evaluation. In cases where a child is home-instructed or home-tutored or placed in a private school by a parent at his/her expense, the HEP may not use mediation or due process to pursue the initial evaluation if the parent does not provide consent.

E. Determination of Needed Evaluation Data - As part of an initial evaluation and as part of any reevaluation, the school-based team, consistent with the make-up of an IEP team, determines which evaluation components are needed to provide data required for the eligibility team to make a decision. In order to make this determination, the team first reviews existing evaluation data on the child, including

1. evaluations and information provided by the child's parent;
2. current classroom-based, local, or state assessments and classroom-based observations; and
3. observations by teachers and related services providers.

On the basis of that review and input from the child's parent, the group identifies what additional data, if any, are needed to determine

1. whether the child is, or continues to be, a child with a disability;
2. the present educational needs of the child;
3. the child's present level of academic achievement and related developmental needs;
4. whether the child needs or continues to need special education and related services; or
5. whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the child's IEP and to participate, as appropriate, in the general curriculum.

This group may conduct this review without a meeting; however, the HEP must provide notice to ensure that the parent has the opportunity to participate in the review. If the HEP decides to hold a meeting, written notice shall also be provided to the parent 5 business days in advance to ensure that the parent has the opportunity to participate. Such notice indicates the purpose, date, time, and location of the meeting and who will be in attendance. Further, it informs the parent that both the HEP and the parent may invite other individuals, including related service personnel, who may have knowledge or expertise about the child, if appropriate.

If the team and other professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs, the HEP shall provide the child's parent with prior written notice, including information regarding

1. the determination and the reasons for it; and
2. the parent's right to request an evaluation to determine whether the child continues to be a child with a disability and to determine the child's educational needs.

Unless the child's parent requests an evaluation for these specific purposes, this review process may be considered the evaluation.

If the team determines not to evaluate a child suspected of a disability, the parent is provided with prior written notice, including his/her right to appeal the decision through due process hearing proceedings.

F. Initial Evaluation - Evaluation is defined as meaning procedures to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. Before any action is taken with respect to the initial placement of a child with a disability in a special education program, a full and individual evaluation of the child's educational needs must be conducted. The HEPs' evaluation process is designed to be sufficiently comprehensive to identify all the child's special education and related service needs, whether or not they link to the child's disability category. The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, motor abilities, and adaptive behavior. This may include educational, medical, sociocultural, psychological, or developmental assessments.

The HEP procedures for the evaluation of referred children include the following:

1. written prior notice (in the parent's native language or mode of communication unless it is clearly not feasible to do so);
2. notice of procedural safeguards;
3. opportunity for independent evaluation;
4. informed parental consent;
5. assignment of surrogate parent when necessary;
6. opportunity for impartial due process hearing;
7. confidentiality; and
8. opportunity for examination of records.

As above indicated, the HEPs shall make reasonable efforts to obtain parental consent for an initial evaluation to determine whether a child is a child with a disability. However, if the child is a ward of the state and is not residing with his/her parent, the HEPs are not required to obtain parental consent to determine whether the child is a child with a disability when any of the following occur:

1. the HEP has made reasonable efforts but can not discover the whereabouts of the parents;
2. the rights of the parents have been terminated in accordance with Virginia law; or
3. the parents' rights to make educational decisions have been subrogated under state law and consent for the initial evaluation has been given by an individual appointed by the judge to represent the child.

The HEPs shall then proceed with evaluating the child without finalizing the appointment of a surrogate parent.

Ensuring that assessments and evaluation materials selected and administered in the medical setting are not racially or culturally discriminatory is a primary HEP goal. An equally important concern is determining that these materials are not discriminatory to children with various disabilities. Tests are selected and administered with consideration of the student's impairments so as to ensure that the results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure rather than reflecting the child's impaired sensory, motor, or communication skills (except when those skills are the factors which the test purports to measure).

When tests are administered to children with impaired sensory, motor, or communication skills, accommodations are made and noted in the assessment report. It follows that assessments and other diagnostic materials must be provided in the child's native language and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, or functionally, unless it is clearly not feasible to so provide or administer. For the child with limited English proficiency, it is important to ensure that materials/procedures used to assess the child measure potential disability and need for special education rather than the child's English language skills. All evaluation instruments are reviewed for validity and reliability as well as sensitivity and specificity and are administered by knowledgeable and trained personnel, in accordance with the instructions provided by their producers.

The HEPs gather academic information about the child and use a variety of assessment tools and strategies to glean functional, developmental, and academic information, including information provided by the parent, which may assist in determining whether the child has a disability and the content of the child's IEP. Of note is the fact that nonstandardized tests, administered by qualified personnel, may also be used. The objective is to utilize tests and other evaluation materials which provide relevant information to assist in determining the specific educational needs of the child, including information related to enabling the child to be involved

in and progress in the general curriculum or, for the preschool child, to participate in appropriate activities. In no case is a single measure nor only those assessment tools which provide a single general intelligence quotient used as the sole criterion for determining whether a child has a disability or an appropriate educational program for the child.

If the evaluation requires assessment in more than one area relating to the suspected disability, a group of professionals, including at least one teacher or other specialist on the multidisciplinary team with knowledge in the area of suspected disability, completes the evaluation.

Technically sound instruments are employed in an effort to ensure that the relative contribution of cognitive and behavioral factors, in addition to physical and developmental factors, is considered. It must be recognized, however, that a period of hospitalization is not the optimal time for completing assessments and that the child's medical status may preclude the administration of certain instruments. Likewise, if an assessment is not conducted under standard conditions, i.e., method of test administration, the extent to which it varied from standard conditions must be noted in the evaluation report. All assessment reports must be in writing.

Finally, the hearing of each child suspected of having a disability shall be screened during the eligibility process prior to initial determination of eligibility. A complete audiological assessment, including tests which assess inner and middle ear functioning, must be performed on each child who fails two hearing screening tests or who is hearing impaired or deaf. The second hearing screening shall be completed not less than 15 nor more than 45 days after administration of the first screening test.

A written copy of the evaluation report(s) must be provided at no cost to the parent. Reports shall be available to the parent no later than 2 business days before the meeting to determine eligibility.

G. Eligibility - Within 65 business days after the referral for evaluation is received by the education director or designee, the child's eligibility for special education and related services is determined unless the parent repeatedly fails or refuses to produce the student for the evaluation. Notably, if in the same school year a student enrolls in the HEP after the above-referenced timeframe has commenced and prior to the previous LEA's completion of eligibility determination, an exception may be made. In such instances, it remains the HEP's responsibility to ensure that sufficient progress is made to facilitate prompt completion of the evaluation and that the parent agrees to a specific time when the evaluation is to be completed. Similarly, when a child is discharged prior to completion of eligibility determination and returns to his/her home school in the same school year, it is incumbent on HEP staff to coordinate the administration of assessments with the appropriate LEA as expeditiously as possible to ensure prompt completion of the full evaluation.

A team, comprised of the same individuals as an IEP team and other qualified professionals, as appropriate, shall determine whether the child is a child with a disability and the educational needs of the child. The HEP education director or designee chairs the group; other members include but are not limited to the parent, eligible student, a special education teacher, a general education teacher qualified to teach a child of the child's age, personnel representing the disciplines providing assessments, and at least one person qualified to conduct individual diagnostic examinations. An LEA representative and the referral source are also invited and encouraged to attend the meeting. Collectively, the group must be qualified to

1. conduct, as appropriate, individual diagnostic assessments in the areas of speech and language, academic achievement, intellectual development, and social-emotional development;
2. interpret assessment and intervention data and apply critical analysis to those data; and
3. develop appropriate educational and transitional recommendations based on the assessment data.

In the process the group shall follow due process procedures in the determination of eligibility and in ensuring the confidentiality of records. The charge of the group is to work toward consensus. Further, the HEP shall obtain parental consent for the initial eligibility determination.

In interpreting data for the purpose of determining if a child is a child with a disability and the educational needs of the child, the HEPs shall

1. gather, consider, and carefully document the use of information from a number of sources, including all of the assessment prescribed by the school-based team for the evaluation, aptitude and achievement tests, teacher recommendations, and parental input as well as information about the child's physical condition, social or cultural background, and adaptive behavior;
2. review the instructional strategies utilized and the student-centered data collected for any student who was involved in RTI and ascertain that repeated assessments of achievement were conducted at reasonable intervals and that the parent was provided with information related to formal assessment of his/her child's progress;
3. ensure that information obtained from all sources is documented and carefully considered in relation to determining the educational needs of the child;
4. ensure that the placement decision is made by a group of persons, including the parent and persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
5. ensure that the placement decision is made in conformity with the LRE.

A component of the evaluation shall include observation of the child in his/her learning environment to document the child's academic performance and behavior in the areas of difficulty. In determining whether the child has a disability, the eligibility group shall

1. use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or
2. have at least one member of the eligibility group conduct an observation of the child's academic performance after the child has been referred for an evaluation and parental consent has been obtained.

In the case of a child of less than school age or out of school, a group member shall observe the child in an environment appropriate for a child of that age.

Of note is the fact that no child shall be determined to have a disability if the determining factor is the lack of appropriate instruction in reading (phonemic awareness; phonics; vocabulary development; reading fluency, including oral reading skills; and reading comprehension strategies); lack of appropriate instruction in math; or limited English proficiency (LEP).

The person chairing the group is to ensure that a written summary of minutes reflecting the team's deliberations and supporting its findings regarding eligibility is recorded and signed by members present. The summary statement may also include other recommendations. The written summary is to be maintained in the child's file, and a copy of the evaluation report(s) and the documentation of the eligibility determination is given to the parent at no cost. The eligibility summary shall include a statement of

1. whether the child has a specific disability;
2. the basis for making the determination, including an assurance that it was made in accordance with the provisions regarding eligibility determination and educational need;
3. the relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
4. the educationally relevant medical findings, if any; and
5. the instructional strategies used and the student-centered data collected if the child participated in a response to scientific, research-based intervention process. The document shall also include the HEP's parent notification of the VDOE's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided; the strategies that were used to increase the child's rate of learning; and the parent's right to request an evaluation.

For identification of a child with a specific learning disability, the eligibility summary shall include a statement as to whether the child

1. does not achieve adequately for his/her age or to meet Virginia-approved grade-level standards in one or more of the following areas: oral expression; listening comprehension; written expression; basic reading skills; reading fluency skills; reading comprehension; mathematics calculation; or mathematical problem solving, when provided with learning experiences and instruction appropriate for his/her age or Virginia-approved grade-level standards;
2. the child does not make sufficient progress to meet age or Virginia-approved, grade-level standards in one or more of the above eight areas when using a process based on the child's response to scientific, research-based intervention; or
3. the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, Virginia-approved grade-level standards or intellectual development.

A child with a disability may be found eligible for special education in order to receive related services. Once eligibility has been determined, decisions about the child's need for related services are made by and added to the IEP by the IEP team. The assessment or other relevant data that is required or necessary for the proposed related service is forwarded to the IEP team in order that appropriate goals and objectives can be developed.

In signing the written summary, each member present certifies whether the report reflects his/her conclusions. If it does not, that team member is responsible for submitting a separate statement presenting his/her conclusions.

In cases where children are not found eligible for special education, information relevant to instruction for a child shall be provided to the child's teachers or any appropriate committee. The parent is also provided with prior written notice, including the parent's right to appeal the decision through the due process hearing procedures.

Upon determination of eligibility, the eligibility summary shall be forwarded to the IEP team, including the parent. If possible, the IEP team reconvenes immediately but no later than 30 days to develop the IEP.

No changes can be made to a child's eligibility for special education and related services without parental consent.

H. Eligibility Determination - For all children suspected of having a disability, HEPs shall use the criteria adopted by the VDOE, as below outlined, for determining whether the child has a disability and have documented evidence that, by reason of the disability, the child needs special education and related services. It should be noted that the VDOE permits the use of a process for determining whether a child has a disability based on the child's response to scientific, research-based intervention as well as other alternative research-based intervention and procedures.

1. Autism - The group may determine that a child has autism if
 - a. there is an adverse effect on the child's educational performance due to documented characteristics of autism; and
 - b. the child has any of the Pervasive Developmental Disorders, also referenced as autism spectrum disorder, such as Autistic Disorder, Asperger's Disorder, Rhett's Disorder, Childhood Disintegrative Disorder, Pervasive Developmental Disorder – Not Otherwise Specified including Atypical Autism as indicated in diagnostic references.
 - 1) Children with Asperger's Disorder demonstrate the following characteristics:
 - i) impairments in social interaction, such as marked impairment in the use of multiple nonverbal behaviors, i.e., eye-to-eye gaze, facial expression, body postures, and gestures, to regulate social interaction; failure to develop peer relationships appropriate to developmental level; a lack of spontaneous seeking to share enjoyment, interests, or achievements with other people, i.e., by a lack of showing, bringing, or pointing out objects of interest; or lack of social or emotional reciprocity; and
 - ii) restricted repetitive and stereotyped patterns of behavior, interests, and activities such as encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus, apparently inflexible adherence to specific, nonfunctional routines or rituals, stereotyped and repetitive motor mannerisms, persistent preoccupation with parts of objects.
 - 2) Children with autistic disorder, in addition to the above listed characteristics also demonstrate impairments in communication, such as delay in, or total lack of, the development of spoken language (not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime). In individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others, stereotyped and repetitive use of language or idiosyncratic language, or lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level is noted.
 - 3) Children with Pervasive Developmental Disorder - Not Otherwise Specified or Atypical Autism may display any of the above listed characteristics without displaying all of the characteristics associated with either Asperger's Disorder or Autistic Disorder.
2. Deaf-blindness - The group may determine that a child has deaf-blindness if the definition of "deaf-blindness" is met.
3. Deafness - The group may determine that a child has deafness if
 - a. the definition of "deafness" is met; and
 - b. there is an adverse effect on the child's educational performance due to one or more documented characteristics of deafness: bilateral hearing loss (sensorineural, or mixed conductive and sensorineural), a fluctuating or a permanent hearing loss, documented auditory dyssynchrony (auditory neuropathy), and/or cortical deafness.

4. Developmental Delay - The group may determine that a preschool child has a developmental delay if the LEA permits the use of developmental delay as a disability category and the definition of "developmental delay" is met or the child has a physical or mental condition that has a high probability of resulting in a developmental delay.

Eligibility as a child with a disability for children ages two through six shall not be limited to developmental delay if eligibility can be determined under another disability category.

5. Emotional Disability - The group may determine that a child has an emotional disability if the definition of "emotional disability" is met and there is an adverse effect on the child's educational performance due to one or more documented characteristics of an emotional disability.
6. Hearing Impairment - The group may determine that a child has a hearing impairment if
 - a. the definition of "hearing impairment" is met;
 - b. there is an adverse effect on the child's educational performance due to one or more of the following documented characteristics of a hearing impairment: unilateral hearing loss (conductive, sensorineural, or mixed), bilateral hearing loss (conductive, sensorineural, or mixed), a fluctuating or permanent hearing loss, and/or auditory dyssynchrony (auditory neuropathy). The hearing loss results in qualitative impairments in communication/educational performance; and
 - c. The term "hard of hearing" may be used in this capacity.
7. Intellectual Disability - The group may determine that a child has an intellectual disability if
 - a. the definition of "intellectual disability" is met; and
 - b. there is an adverse effect on the child's educational performance due to one or more of the following documented characteristics:
 - 1) significantly impaired intellectual functioning, which is two or more standard deviations below the mean, with consideration given to the standard error of measurement for the assessment, on an individually administered, standardized measure of intellectual functioning;
 - 2) concurrently, significantly impaired adaptive behavior as determined by a composite score on an individual standardized instrument of adaptive behavior that measures two standard deviations or more below the mean; and
 - 3) a developmental history that indicates significant impairment in intellectual functioning and a current demonstration of significant impairment is present.
8. Multiple Disabilities - The group may determine that a child has multiple disabilities if the definition of "multiple disabilities" is met.
9. Orthopedic Impairment - The group may determine that a child has an orthopedic impairment if
 - a. the definition of "orthopedic impairment" is met; and
 - b. there is an adverse effect on the child's educational performance due to one or more documented characteristics of an orthopedic impairment.
10. Other Health Impairment - The group may determine that a child has an other health impairment if
 - a. the definition of "other health impairment" is met; and
 - b. there is an adverse effect on the child's educational performance due to one or more documented characteristics of the other health impairment.

11. Specific Learning Disability - The group may determine that a child has a specific learning disability if
- a. the definition of "specific learning disability" is met; and
 - b. the criteria for determining the existence of a specific learning disability are met.

The criteria for determining the existence of a specific learning disability are met if

- a. the child does not achieve adequately for the child's age or to meet Virginia-approved grade-level standards in one or more of the following areas when provided with learning experiences and instruction appropriate for the child's age or Virginia-approved grade-level standards:
 - 1) oral expression;
 - 2) listening comprehension;
 - 3) written expression;
 - 4) basic reading skills;
 - 5) reading fluency skills;
 - 6) reading comprehension;
 - 7) mathematical calculations; or
 - 8) mathematical problem solving.
- b. the child does not make sufficient progress to meet age or Virginia-approved grade-level standards in one or more of the above listed areas when using a process based on the child's response to scientific, research-based intervention or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, Virginia-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments.
- c. The group determines that its findings based on subdivisions a. and b. above are not primarily the result of
 - 1) a visual, hearing, or motor impairment;
 - 2) intellectual disability;
 - 3) emotional disability;
 - 4) environmental, cultural, or economic disadvantage; or
 - 5) LEP.

The VDOE does not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability.

12. Speech or Language Impairment - The group may determine that a child has a speech or language impairment if
- a. the definition of "speech or language impairment" is met;
 - b. there is an adverse effect on the child's educational performance due to one or more documented characteristics of speech or language impairment;
 - c. the child has a significant discrepancy from typical communication skills in one or more of the following areas: fluency, impaired articulation, expressive or receptive language impairment, or voice impairment; and
 - d. information from instruments that are culturally and linguistically appropriate, including standardized and criterion-referenced measures, are used in conjunction with information from classroom observations to determine the severity of the communication impairment.

Children shall not be identified as children having a speech or language impairment if the area of concern is primarily the result of sociocultural dialect or delays/differences associated with acquisition of English as a second language or is within the purview of established norms for articulation and language development.

Speech language pathology services may be special education or a related service.

13. Traumatic Brain Injury - The group may determine that a child has a traumatic brain injury if
 - a. the definition of "traumatic brain injury" is met; and
 - b. there is an adverse effect on the child's educational performance due to one or more documented characteristics of traumatic brain injury.
 14. Visual Impairment - The group may determine that a child has a visual impairment if
 - a. the definition of "visual impairment" is met;
 - b. there is an adverse effect on the child's educational performance due to one or more documented characteristics of visual impairment; and
 - c. the child has any of the conditions including, but not limited to oculomotor apraxia, cortical visual impairment, and/or a progressive loss of vision, which may in the future have an adverse effect on educational performance, or a functional vision loss where field and acuity deficits alone may not meet the following criteria; or the child demonstrates the following characteristics of blindness or visual impairment:
 - 1) a child with blindness demonstrates either visual acuity in the better eye with best possible correction of 20/200 or less at distance or near or visual field restriction in the better eye of remaining visual field of 20 degrees or less.
 - 2) a child with a visual impairment demonstrates visual acuity better than 20/200 but worse than 20/70 at distance and/or near or visual field restriction in the better eye of remaining visual field of 70 degrees or less but better than 20 degrees.
- I. Reevaluation** - Few children remain hospitalized long enough to require a reevaluation; however, a reevaluation must be conducted
1. at least once every three years unless the parent and the HEP agree that a reevaluation is not necessary;
 2. if the HEP determines that the educational or related service needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
 3. if the child's parent or teacher requests a reevaluation.

Upon the request of a parent or teacher for a reevaluation, the school-based team will convene to discuss the request and make a decision as to what, if any, evaluation components will be conducted. The HEP may refuse to conduct a reevaluation if it follows prescribed prior notice procedures.

If a reevaluation is conducted for purposes other than a child's triennial, the reevaluation, including determination of eligibility, shall be completed in 65 business days from receipt of the referral by the education director or designee. This timeline may be extended if the parent and the eligibility group agree in writing to extend it in order to obtain additional data. When a reevaluation is for triennial purposes, the process must be initiated in sufficient time to complete the process prior to the third anniversary of the date eligibility was last determined. If, based upon reevaluation and the eligibility process, the IEP team determines that changes are necessary, the 30-day timeline for development of the IEP applies.

Notably, reevaluation shall occur not more frequently than once a year unless the parent and the HEP agree otherwise. In the event the HEP refuses to conduct a reevaluation because one has already been completed within the year, that refusal must be documented through written prior notice.

A reevaluation may be conducted without new formal assessment data. Rather, it can focus on evaluations and information provided by the parent; current classroom-based assessment and observations; and observations by teachers and related service providers. With the provision of proper notice to the parent, ensuring that he/she has the opportunity to participate in the review of existing data, the eligibility group may conclude that no additional data are needed to decide whether the child continues to be a child with a disability and to determine the child's educational needs, meaning that the IEP team is not required to meet unless the parent requests it. In such cases, the HEP must provide the parent with prior written notice of the decision. The notice shall include information regarding the determination and the reason for it and the right of the parent to request an evaluation to determine whether the child continues to be a child with a disability and to determine the child's educational needs. In addition, the school-based team will document that the parent was informed that

1. the HEP is not required to conduct an evaluation if the team has determined that it has enough information to determine whether the child is or continues to be a child with a disability and to determine the child's educational needs unless the parent requests an evaluation for these specific purposes;
2. a review of the information that conforms with the required process will be considered the evaluation if no additional data are needed; and
3. he/she has the right to appeal the decision through the use of mediation or due process procedures.

Likewise, as part of the review process, it may be decided that the HEP needs to administer certain tests and other evaluation materials to produce additional data in order to make the determination of continuing eligibility.

Following notification to the parent of the HEP's decision not to reevaluate, the HEP shall communicate the decision regarding the child's continuing eligibility for special education and related services to the parent within 65 days. Should, however, the parent exercise his/her right to request an evaluation, the HEP shall conduct the assessment.

In no case can it be determined that the child is no longer a child with a disability without conducting an evaluation. If three years have not elapsed and the parent or teacher requests that only specified areas be addressed by additional evaluation and conditions do not warrant a reevaluation or an assessment which is more comprehensive than that requested by the parent or teacher, the HEP may limit the assessment to those areas requested.

Students with disabilities who graduate from high school with standard or advanced studies high school diplomas or reach the age of 22 are no longer eligible. It follows that when a student receives such a diploma or ages out, the reevaluation requirements do not apply. However, either of these events constitutes a change in placement, thus requiring prior notice. In the case of proposed graduation, typically as a result of an IEP determination, the parent can dispute.

Notice is required and parental consent must be obtained for all reevaluations unless the HEP can document reasonable efforts (including providing notice to the parent in writing or by telephone or in person with proper documentation) to obtain consent and the parent's failure to respond. In such a circumstance, the HEP shall proceed as if consent has been given. If the parent refuses consent for a reevaluation, the HEP may, but is not required to, pursue reevaluation by using due process hearing or mediation procedures. In the event that the HEP chooses not to pursue the reevaluation because, based on a review of existing data, it does not believe the child continues to have a disability or does not continue to need

special education and related services, the HEP may decide that it will not continue to provide such services to the child. It is then the HEP's responsibility to provide the child's parent with prior written notice of its proposal to discontinue the provision of FAPE and the parent's right to use mediation or the due process procedures if the parent disagrees.

- J. Termination of Services** - Termination of a child's eligibility for special education and related services is a function of the eligibility team and requires that the child be evaluated before the determination is made that the child is no longer a child with a disability. Parents must be provided with prior notice before any partial or complete termination of services, and parental consent must also be obtained.

Evaluation is not required before a child's termination of eligibility due to graduation with a standard or advanced diploma or reaching the age of 22. It is the responsibility of the HEP, however, to provide the child with a summary of his/her academic achievement and functional performance, which includes recommendations aimed at assisting the student in meeting his/her postsecondary goals. In cases where a child exits school without graduating with a standard or advanced standard diploma or reaching the age of 22, including if the child receives a general educational development (GED) credential or an alternative diploma option, the HEP may provide the child with a summary of academic achievement and functional performance. Should the child return to school after receiving the summary, but prior to age 22, the HEP must complete an updated summary of academic achievement or functional performance when one of the following occurs: the student leaves school, graduates with a standard or advanced student diploma, or reaches the age of 22.

A related service may be terminated during an IEP meeting without any determination that the child is no longer a child with a disability. When making such a determination, the IEP team shall include personnel representing the related service disciplines in person, by telephone, or by other electronic means. Should a disagreement arise about the provision of a particular service, mediation and due process are available options to resolve disputes regarding particular services. Of note is the fact that parental consent shall be secured prior to the termination of related services.

- K. Revocation of Consent** - A parent may revoke consent for the continued provision of special education and related services at any time. The revocation must be in writing. It is not the prerogative of the HEP to require the parent to provide an explanation, either orally or in writing nor may the HEP use mediation or due process hearing procedures to obtain parental consent or a ruling that services may be provided to the child. Rather, once an HEP receives parental revocation, the HEP is required to provide the parent with prior written notice regarding the change in educational placement and services that will result from the revocation. The HEP is not, however, required to amend the child's educational file to remove any reference to the child's receipt of special education and related services because of the consent revocation.

When a parent revokes consent, that revocation is not retroactive, i.e., it does not negate action that occurred after the consent was given and before the consent was revoked. It follows that revocation ceases to be relevant after the activity for which consent was obtained has been completed.

After revocation of consent goes into effect,

1. the student is treated the same as any other student without disabilities, along with access to accommodations, if any, that are available to students without disabilities;

2. the student's IEP is no longer in effect, and the HEP is not required to provide a FAPE, conduct a triennial evaluation, or hold annual IEP meetings; and
3. regular discipline rules apply. Unless intervening facts show otherwise, the HEP would not be considered to "have knowledge" of the student's disability and would not be required to conduct a manifestation review.

In addition, if the parent revokes consent after the school year begins but before administration of the annual state assessment required under the Elementary and Secondary Education Act, the child is considered a general education student who has exited special education for accountability purposes. A state may continue to include a child whose parent revokes consent for special education and related services in the students with disabilities subgroup for purposes of calculating annual yearly progress (AYP) for two years following that revocation although the child will not have an IEP or access to any of the accommodations previously provided in the IEP unless the accommodations are provided to all students.

If a parent revokes consent and later requests that his/her child be evaluated for special education and related services, the HEP must treat this as a request for initial evaluation.

- L. Status of Students Enrolling with Current IEPs** - Criteria for admission to and discharge from children's specialized hospitals are not established by educational authority or for elementary and secondary education purposes. Because children are admitted to these facilities with varying instructional needs and abilities, the instructional program for hospitalized children must be modified to meet their individual needs. When school-aged children who are admitted have existing IEPs, it is the responsibility of the HEPs to ensure that they are implemented, with appropriate modifications, by educational personnel assigned to the facilities.

When a child with a disability transfers into an HEP from an LEA in Virginia or an LEA outside of Virginia, it is the responsibility of the hospital teacher to request a copy of the current IEP developed by the LEA. In this regard, the HEP shall take reasonable steps to obtain the child's school records, including the IEP and supporting documents and any other records relating to the provision of special education and related services to the child, promptly. If the previous LEA is not forthcoming in providing the records, the HEP shall contact the VDOE for assistance. If the HEP is unable to obtain the IEP from the previous LEA or from the parent, the HEP is not required to provide special education and related service to the child. Rather, the HEP shall place the student in a general education program and conduct an evaluation if the HEP determines that an evaluation is necessary.

In cases where the child's records are received from the previous LEA, the child, in consultation with the parent, is placed in a special education program consistent with the current IEP until the HEP either

1. adopts the current IEP and implements it with the parent's consent;
2. modifies it as required due to the child's medical status; or
3. conducts an evaluation, if determined necessary, and develops and implements a new IEP with the parent's consent.

Before a new IEP is finalized, the HEP may develop and implement an interim IEP with the parent's consent while obtaining and reviewing whatever information is needed to develop a new IEP. Should the parent and the HEP not agree on interim services or a new IEP, the parent or the HEP may initiate the dispute resolution options of mediation or due process to resolve the dispute. During the resolution of the dispute, the HEP shall provide a FAPE in consultation with the parent, including services comparable to those described in the child's IEP from the previous LEA. In all cases, it is the responsibility of the HEP to provide the parent with proper notice regarding actions taken to provide the child with a FAPE.

If the HEP determines it necessary to conduct an evaluation of the child, the HEP shall provide proper notice, initiate evaluation procedures, conduct the evaluation, determine eligibility, and develop an IEP in accordance with Virginia Regulations. During the evaluation period the child shall receive services in accordance with the existing IEP, excluding the sections of the IEP not in keeping with Virginia Regulations. It follows that it is the HEP's responsibility to inform the parent if there are sections of the existing IEP that are not in keeping with Virginia Regulations.

Notably, needed therapies, such as physical therapy, occupational therapy, and speech therapy, arising from the child's medical condition will be provided by the hospital. When the student's IEP specifies a related service that can appropriately be maintained during the child's hospitalization, provisions for the service will be arranged by the education director or designee.

VII. Service Delivery - Free Appropriate Public Education (FAPE)

- A. Least Restrictive Environment (LRE)** - The HEPs have no control over the facilities' admission procedures, and the extent to which a child is able to participate in the regular educational program of an HEP, i.e., the LRE, is limited only by the child's medical status. It follows that all services for children with disabilities are individualized according to the child's IEP.

Given these limits, each child with a disability, aged two to 21, inclusive, participates with age-appropriate peers without disabilities to the maximum extent appropriate to the needs of the child with a disability in all aspects of the HEPs, including nonacademic and extracurricular services and activities. To ensure children with disabilities an equal opportunity to participate in these activities, the HEPs provide supplementary aids and supports determined appropriate and necessary by the child's IEP team. These nonacademic and extracurricular services and activities may include group luncheons, recreational activities, and speakers/performers from the community.

- B. Continuum of Services** - The HEPs are committed to the concept of educating children with disabilities, including preschool children with disabilities, in the LRE and maintaining a continuum of educational placements designed to integrate children with disabilities within the medical setting. All placement decisions are based on the individual needs of the child, with appropriate documentation in the IEP of all alternatives considered and the rationale for choosing the selected placement. The parent of each child with a disability is included as a member of any group making placement decisions.

HEP placements range from placement in an LEA to chronological grouping of children with disabilities and their age-appropriate peers for instruction in a hospital classroom to individualized teaching at bedside or in a classroom setting. Bedside teaching, when children are on isolation or in traction, represents the most restrictive environment. It should be noted that the nature of the medical setting precludes the use of certain school-based models, such as resource classes or a separate facility, for the delivery of services.

- C. Placements** - The educational placement of each child with a disability is determined at least annually and is based on his/her IEP. Placement decisions are made by the IEP team, which includes the parent and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. All placement decisions include consideration of the child's

social and personal needs, as well as the child's level of educational functioning, and are made in conformity with the LRE provisions.

If a parent can not participate in a meeting in which a decision is to be made relating to the educational placement of his/her child, the HEP shall use other methods to ensure his/her participation, including individual or conference telephone calls or video conferencing. A placement decision may be made by the IEP team without the involvement of a parent if the HEP is unable to obtain the parent's participation in the decision. In this case, the HEP shall maintain a record of the attempts to ensure the parent's involvement, including information that is consistent with the requirements for parent participation in an IEP meeting. The HEP shall make reasonable efforts to ensure that the parent understands and is able to participate in any group discussion relating to the educational placement of his/her child, including arranging for an interpreter for a parent with deafness or whose native language is other than English.

Various alternative placements are available, to the extent necessary, to implement the IEP for each child with a disability. In selecting the LRE consideration is given to any potentially harmful effect on the child or on the quality of services which he/she needs. In no case would a child with a disability be removed from an age-appropriate regular classroom solely because of needed modifications in the general curriculum. Further, a student need not fail in the regular classroom before another placement can be considered. Conversely, a student does not have to demonstrate achievement of a specific performance level as a prerequisite for placement in a regular classroom.

The determination of appropriate placement for a child whose behavior is interfering with the education of others requires careful consideration as to whether the child can appropriately function in the regular classroom if provided with appropriate behavioral supports, strategies, and interventions. If the child can function appropriately in the regular classroom with behavioral supports, strategies, and interventions, placement in a more restrictive environment would be inconsistent with the requirements related to LRE. If, however, the child's behavior in the regular classroom, even with the provision of such supports, strategies, and interventions, would significantly impair the learning of others, that placement would not meet the child's needs and would not be considered appropriate.

In the event that it is determined that educational interpreting services are appropriate for the hard of hearing and/or child with deafness, qualified personnel shall be provided in accordance with the child's mode of communication.

The enrollment of a child with a disability in an HEP due to hospitalization normally precludes consideration of educational placement as close as possible to the child's home or in the school which he would attend if nondisabled. For those children with disabilities residing in medical facilities who are eligible to be appropriately placed in public school programs, see Virginia Regulations.

Students who are unable to participate or who require modification(s) in the school day because of medical reasons will have a modification/waiver on file.

- D. Waiver/Modification** - All children are entitled to education services beginning the first day of their admission to the hospital. When services are declined, a parent or guardian is asked to sign an Educational Release Form indicating that he/she does not desire services for his/her child.

The HEPs are responsible for providing at least 5½ hours of general and/or special education per school day or 27½ hours per week in a manner consistent with the student's instructional plan from his/her home school. It should be understood, however, that in specialized children's hospitals, students are first and foremost patients. It follows that each student's medical status and/or treatment plan/schedule limits his/her participation in the HEPs' full school day. Modification or waiver of education services is recorded as follows.

1. **Modification** - To document modification of the 5½-hour requirement, hospital teachers are to place a Waiver/Modification Statement form signed by a physician in the student files of enrolled school-aged students. Internal to the HEPs, a nursing unit's shift charge nurse and/or a nurse practitioner assigned to a subspecialty service are designated as signatory alternatives for attending physicians based on their knowledge and implementation of patient treatment plans and current orders entered by the physicians.
2. **Waiver** - If upon admission a school-aged child's medical status precludes participation in the HEP, the waiver of education services must be documented on the signed Waiver/Modification Statement. As noted above, all waivers must be signed by an attending physician or designee, i.e., a nursing unit's shift charge nurse and/or a nurse practitioner assigned to a subspecialty service. Notably, children on full waiver are not counted for attendance or membership. It is, however, each teacher's responsibility to document the status of a child who is on a full medical waiver in his/her student file and report it to the education director or designee weekly.

When a child becomes unable to receive services for medical reasons after his/her enrollment, there must be a waiver signed for the child. Should he/she be able to reenroll in the HEP at a later date, the timetable for identification, evaluation, and determination of eligibility for special education and related services is resumed on the day of reenrollment.

Of note is the fact that a waiver is not typically required for minor changes, such as post-surgery recovery, in a school-aged child's educational program. Rather, such short-term adjustments are to be documented in the child's student file.

- E. **Controlled Substance Act and School Attendance** - A student with a disability can not be required to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. 801 et seq.) as a condition of attending school, receiving an evaluation, or receiving services. It follows that there can not be any barriers to attending school for hospitalized children on medications or engaged in medication trials. Just as teachers and other school personnel in LEAs may consult or share classroom-based observations with the parent regarding a student's academic and functional performance or behavior in the classroom or school or regarding the need for evaluation for special education or related services, hospital teachers or educational consultants may share similar impressions with the parent and medical staff.
- F. **Proper Functioning of Hearing Aids** - The HEPs ensure that the hearing aids worn in school by enrolled students with hearing impairments, including deafness, are functioning properly.
- G. **Accessible Instructional Materials Center of Virginia (AIM-VA)** - In keeping with the NIMAS, the HEPs are committed to taking all reasonable steps to provide access to instructional materials for students who are blind or have other print disabilities at the same time that students without disabilities receive those materials. Curriculum materials covered by NIMAS include printed textbooks and

printed core curriculum materials that are written and published primarily for use in elementary and secondary school instruction and that are required by a state or school division for use by students in the classroom.

AIM-VA is located at George Mason University. Its mission is to develop and implement a statewide library system that is capable of producing and distributing accessible educational materials, consistent with NIMAS. Focused on ensuring that students with print disabilities, in accordance with their IEPs, have accessible instructional materials available to them in a timely manner, AIM-VA provides services to all Virginia school divisions, private schools, regional programs, and SOPs. Notably, home-schooled students are also eligible for AIM-VA services.

- H. Assistive Technology (AT)** - The HEPs ensure that all students have equal access to educational and information technologies as part of providing them with a FAPE. During the IEP development process, AT devices and services are considered for all students with disabilities regardless of type or severity of disability in an effort to improve or maintain their functional capabilities. Based on a child-centered process, decisions regarding the need for assistive technology are determined by the unique educational needs of each student. A continuum of assistive technology devices and services is explored, and decisions are made based on access to the curriculum and the student's IEP goals and objectives. AT devices or services, or both, are included in the child's IEP if required as part of the child's special education, related services, and/or supplemental aids and services.
- I. Transportation** - In general, transportation is not a consideration as it relates to the provision of a FAPE for hospitalized children. In the event, however, that an HEP enters an agreement with another LEA or SOP for the provision of special education and/or related services, transportation to and from the program would be provided at no cost to the parent. Should a hospitalized student be provided services in a state residential school for the deaf and the blind as a day student, the responsibility for transportation would be the HEP's.
- J. Extended School Year Services (ESY)** - The HEPs provide ESY services if a child's IEP team determines that the services are necessary to the provision of a FAPE because the benefits a child with a disability gains during the regular school year will be significantly jeopardized if ESY services are not provided. In implementing the requirements for ESY, the HEPs may not limit ESY services to particular disability categories; unilaterally limit the type, amount, or duration of services; or limit the provision of ESY services to only summer.
- K. Children with Disabilities in Public Charter Schools** - Children with disabilities attending public charter schools and their parents retain all rights under Part B. When a child with a disability who attends a charter school enrolls in an HEP, the program shall initiate and conduct meetings to develop, review, and revise an IEP for the child. Efforts will be made to ensure that a representative of the child's school attends each meeting. If a representative of the school cannot attend, the HEP shall use other methods, including individual or conference telephone calls, to ensure participation by the charter school.

VIII. Individualized Education Programs (IEPs) - Specific requirements for the development and implementation of IEPs are found in Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities: Final Rule, as printed in the Federal Register on December 1, 2008.

- A. Accountability** - An IEP, including consent for placement, must be developed within 30 days of the initial determination of a child's need for special education and related services or reevaluation and eligibility process. An IEP must be in

effect for each child with a disability in the HEP's jurisdiction at the beginning of each school year. The goal is for the IEP to be implemented as soon as possible following the IEP meeting, with the understanding that written parental consent must be obtained before providing initial services. Should a parent fail to provide consent for services, the HEP may not use due process procedures to seek to provide them. While mediation remains an option, the HEP will not be considered to have failed to provide a FAPE to the child in such a case.

A child's IEP must be accessible to every HEP staff person who is responsible for its implementation. Also, each teacher and provider must be informed of their specific responsibilities to implement the IEP and the specific accommodations/modifications/supports the IEP requires.

The HEPs shall initiate and conduct meetings periodically, but not less frequently than annually, to review each child's IEP and determine whether the annual goals are being achieved. The IEP is revised as appropriate to address

1. any lack of expected progress toward the annual goals and in the general education curriculum, if appropriate;
2. the results of any reevaluation;
3. information about the child provided to, or by, the parent;
4. the child's anticipated needs; and
5. other matters.

A meeting of the IEP team must be held for this purpose at least once a year; a representative of the LEA is invited. Thereafter, when making changes to a child's IEP after the annual IEP meeting, the parent of the child and education director or designee may agree not to convene another meeting for the purpose of making changes and may elect instead to develop a written document to amend or modify the child's current IEP. In such instances, it is the responsibility of the education director or designee to obtain parental consent, to document that the amendment did not necessitate an IEP meeting, and to inform all members of the IEP team of changes made to the child's IEP. When changes are made to the IEP by either the entire IEP team or by amending the document rather than redrafting the entire IEP, the parent is provided with a revised copy of the IEP with the amendments incorporated.

When transition is a component of the IEP and it is determined that a participating agency has failed to provide the transition services described, the HEP shall reconvene the IEP team to identify alternative strategies to meet the transition objectives developed for the child.

The HEPs provide special education and related services to children with disabilities in accordance with the individual child's IEP, making a good faith effort to assist the child in achieving his/her annual goals. HEPs, hospital teachers, or other persons are not, however, held accountable if a child does not achieve the growth projected. None of the above, however, eliminates the right of a parent to ask for revisions of the child's IEP or to invoke due process procedures if the parent thinks that efforts are not being made.

B. IEP Team - The IEP team includes a representative of the HEP, other than the child's teacher, who is

1. qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities;
2. knowledgeable about the general education curriculum; and
3. knowledgeable about the availability of resources.

not less than one of the child's special education teachers or providers; the child's parent; the child, if appropriate; a representative of the LEA; not less than one regular education teacher if the child is participating or may participate in the

regular education environment; and, at the discretion of the parent or the HEP, other individuals, including related service providers, who have knowledge or special expertise regarding the child. For children who are in the custody of a local social services or other child welfare agency, the child's caseworker should be included, with the understanding

1. that the caseworker may not assume the role of the parent; and
2. if the caseworker is unable to attend the meeting as scheduled, the meeting may be held without the caseworker being in attendance.

The HEPs also ensure that a member of the evaluation team participates in the meeting or the representative of the HEP, the child's teacher, or some other person is present at the meeting who is knowledgeable about the evaluation procedures used with the child and can address the instructional implications of evaluation results.

When a regular education teacher participates in the development of an IEP for a child, the determination of appropriate positive behavioral interventions and strategies can be addressed as well as the need for supplementary aids and services, accommodations, program modifications, and supports for school personnel.

For a child who was previously served under Part C, for an initial IEP team meeting, and at the request of the parent, the HEP invites the Part C service coordinator or other representatives to the IEP meeting to assist with the smooth transition of services. In such cases, the IEP meeting notice informs the parent of his/her right to have the Part C service coordinator or other representatives participate in the initial IEP team meeting.

Likewise, if one of the purposes of an IEP meeting is the consideration of post-secondary goals and the transition services needed to assist the child in reaching those goals, the HEP invites the student and, to the extent appropriate, with parental consent, a representative of any other agency that is likely to be responsible for providing or paying for transition services. Should the invited representative(s) not attend, the HEP takes other steps to obtain the participation of the agency(s) in transition service planning.

Attendance at the IEP planning conference is documented on the IEP form.

- C. IEP Team Attendance** - A member of the IEP team is not required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the HEP agree that the attendance of such member is not necessary because the member's area of curriculum or related service is not being modified or discussed at the meeting. Further, a required member of the IEP team may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification or a discussion of the member's area of curriculum or related service, with the joint consent of the parent and the HEP. In such instances, the IEP team member submits her input to the team in writing prior to the meeting. In either case, it is the responsibility of the education director or designee to document these provisions and secure the parent's agreement to such an arrangement in writing.

In the event the parent disagrees with the excusal of an IEP team member, the parent may agree to continue with the meeting, require an additional meeting if more information is needed, or require that the meeting be rescheduled.

- D. Parent and LEA Participation** - The HEPs take steps to ensure that one or both of the parents and a representative of the LEA are present at each meeting or are afforded the opportunity to participate, including

1. notifying the parent and LEA personnel of the meeting early enough to ensure that they will have an opportunity to attend; and
 2. scheduling the meeting at a mutually agreed upon time and place.
- Every effort shall also be made to consolidate meetings convened on the child's behalf to the extent possible.

The notice given the parent should be in writing but may be given by telephone or in person with proper documentation. It must indicate the purpose, time, date, and location of the meeting and who will be in attendance.

Further, the notice must inform the parent that he/she or the HEP may invite other individuals who have knowledge or special expertise regarding the child. The determination of whether the person invited has such knowledge or special expertise shall be made by the inviting party. Of note is the fact that the attendance of either party's attorneys is strongly discouraged because of the potential for their presence to create an adversarial atmosphere that would not necessarily be in the best interests of the child.

If a purpose of the meeting is the consideration of the student's needed transition services or postsecondary goals, the notice must also indicate this purpose; indicate that the HEP will invite the student; and identify any other agency that, with the parent's or adult student's permission, will be invited to send a representative. In the event that the student does not attend, the HEP takes other steps to ensure that the student's preferences and interests are considered. Similarly, if a representative of an agency invited to attend does not do so, the HEP shall use other methods to obtain that agency's participation in planning any transition services.

If neither parent can attend the IEP meeting, then the HEP uses other methods, including individual or conference calls or video conferencing, to ensure parent participation.

A meeting may be conducted without the child's parent in attendance if an HEP is unable to convince him/her to attend. In this case, the HEP must have a record of the attempts to arrange a mutually agreed upon time and place, such as

1. detailed records of telephone calls made or attempted and the results of those calls;
2. copies of correspondence sent to the parent and any responses received; or
3. detailed records of visits made to the parent's home or place of employment and the results of those visits.

The HEP shall take whatever action is necessary to ensure that the parent understands the proceedings at meetings, including arranging for an interpreter for a parent with deafness or whose native language is other than English.

The HEP shall permit the use of audio or video recording devices at IEP meetings. The parent shall inform the HEP before the meeting in writing of his/her intent to record the meeting unless the parent cannot write in English. If the parent does not inform the HEP of his/her intent to record the IEP meeting, the parent shall provide the HEP with a copy of the recording. It is also the responsibility of the parent to provide the audio equipment and materials for the recording. If the HEP records the meeting or receives a copy of the recording from the parent, the recording becomes part of the child's educational file.

In the event the IEP team cannot reach consensus, the HEP shall provide the parent with prior notice of the HEP's proposals or refusals or both regarding the child's educational placement or the provision of a FAPE.

The HEP gives the parent and the LEA copies of the IEP at no cost, either at the IEP meeting or within a reasonable period of time after the IEP meeting, not to exceed 10 days.

- E. Development, Review, and Revision of the IEP** - The IEP team shall meet to consider the strengths of the child and the concerns of the parent for enhancing the education of his/her child; the results of the initial or most recent evaluation of the child; and the academic, developmental, and functional needs of the child in developing, reviewing, and, if appropriate, revising the child's IEP.

At the IEP meeting the parent shall be furnished with a written description of the special factors that the IEP team shall consider. The description shall be written in language understandable by the general public and provided in the native language of the parent or other mode of communication used by the parent unless it is clearly not feasible to do so. Considerations to be addressed include

1. positive behavioral interventions, strategies, and supports to address the behavior of a child whose behavior impedes his/her learning or that of others;
2. the language needs of a child with LEP as they relate to the IEP;
3. providing for instruction in Braille and the use of Braille for a child who is blind or visually impaired unless the team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate;
4. the communication needs of the child;
5. the child's need for benchmarks or short-term objectives;
6. for deaf or hard of hearing children, the child's language and communication needs, opportunities for direct communication with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and
7. whether the child needs assistive technology devices and services.

If, in considering these special factors, the IEP team determines that a child needs a particular device or service (including an intervention, accommodation, or other modification), the IEP team must include a statement to that effect in the child's IEP.

- F. Content of the IEP** - In order to provide a FAPE, the IEP must address all of the child's identified special education and related needs, and the needed services and placement must be based on the child's unique needs and not on the child's disability.

The IEP must include

1. a statement of the child's present level of academic achievement and functional performance which
 - a. describes the effects of the disability on the child's involvement and progress in the general education curriculum or, for preschoolers, as appropriate, describes the effects of the disability on the child's participation in appropriate activities;
 - b. is written in objective, measurable terms to the extent possible. Test scores, if appropriate, should be self-explanatory or an explanation should be included; and
 - c. ensures that the present level of performance relates directly to the other components of the IEP.
2. a statement of measurable annual goals, including academic, functional, and developmental goals, related to

- a. meeting the child's needs that result from the child's disability in order to enable the child to be involved in and make progress in the general education curriculum;
- b. meeting each of the child's other educational needs that result from the disability; and
- c. specifying how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress which the child is making toward meeting the annual goals will be provided;
- 3. a description of benchmarks or short-term objectives, if considered and determined appropriate by the IEP team. For children with disabilities who take alternate assessments aligned to alternate achievement standards, benchmarks or short-term objectives are to be included routinely;
- 4. a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child or on behalf of the child. The statement must include program modifications or supports for school personnel and must be aimed at
 - a. appropriate advancement toward attainment of the annual goals;
 - b. involvement and making progress in the general education curriculum and participation in extracurricular and other nonacademic activities; and
 - c. the child being educated and participating with other children with disabilities and children without disabilities in the above described activities;
- 5. an explanation of the extent, if any, to which the child will not participate with children without disabilities in the regular class and the above described activities;
- 6. a statement specifying any individual appropriate accommodations or modifications necessary to measure the academic achievement and functional performance of the child on state or districtwide assessments. When an assessment (or part of an assessment) is determined not to be appropriate, an explanation is to be provided as well as a statement regarding the appropriateness of the selected alternate assessment and substantiating that the child meets the criteria for it. Further, documentation must be included of the discussion and the parent's understanding of the implications of nonparticipation on the student's course grade, promotion, graduation with a modified standard, standard, or advanced studies diploma, or other matters;
- 7. the projected dates for initiation of services and modifications described, and the anticipated frequency, location, and duration of the services and modifications (month, day, and year);
- 8. a statement of transition services prior to the child entering secondary school but not later than the first IEP to be in effect when the child turns 14, or younger if determined appropriate, which is updated annually and addresses
 - a. measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;
 - b. transition services, including courses of study, needed to assist the child in reaching the stated goals;
 - c. if appropriate, a statement, updated annually, of interagency responsibilities or linkages, beginning not later than the first IEP to be in effect when the student turns 16, or younger if determined appropriate;
 - d. for a student pursuing a modified standard diploma, consideration of the student's need for occupational readiness upon school completion, including consideration of courses to prepare the student as a career and technical education program completer;
 - e. beginning at least one year before the student reaches age of majority (18), the fact that the student and his/her parent have been informed of rights which will transfer to the student upon reaching the age of 18; and
- 9. a statement indicating if the student is projected to graduate/exit the program.

G. Virginia State Assessment Program (VSAP) - Federal regulations under the IDEA; the Rehabilitation Act of 1973, Section 504; and the No Child Left Behind Act and state regulations contained in Sections 51.01.40 of the Virginians with

Disabilities Act require that individuals with disabling conditions be given an equal opportunity to participate in and benefit from policies and procedures customarily granted to all individuals. Accordingly, children with disabilities enrolled in the HEPs are required to participate in the VSAP. They are also given the right to participate in division-wide assessment programs.

Because most students enrolled in the HEPs are admitted to the medical center for short- or intermediate-term stays, they typically participate in the VSAP program administered through their LEAs. HEP staff members cooperate fully with the LEA to ensure that an eligible student hospitalized at the time of an IEP review session addressing participation in the VSAP receives the assistance necessary to make an informed decision. Further, the staff administers the appropriate VSAP test(s) to any student hospitalized during the testing period which is set by the state.

The determination of assessment/testing modifications is the right and responsibility of the student's IEP team. The goal is for alternative testing techniques to allow students with disabling conditions to demonstrate mastery of skills and attainment of knowledge while maintaining a high level of uniformity. The emphasis is on individual student needs, and the accommodations selected should be those which are already a regular part of the student's instructional program. The intended outcome of accommodations is test results that present an accurate description of the student's strengths and weaknesses.

When an assessment (or part of an assessment) is determined not to be appropriate, an explanation is to be provided as well as an indication of how the child will be assessed. It follows that children who are identified as meeting criteria guidelines shall participate in the Virginia Alternative Assessment Program (VAAP).

Appropriate documentation shall be attached to the IEP where it is determined by the IEP team that the student with disabilities will not participate in the VSAP and/or district-wide assessment programs. It shall indicate that the consequences of the decision, i.e., ineligibility for a regular or advanced diploma, have been fully explained and understood by the parent or student (18 years of age or older) and that due process rights have been explained.

- H. Transition** - In addressing transition, the intent is to define the "big picture," i.e., a coordinated set of activities for a child with a disability that is designed to be within a results-oriented process. The activities are to focus on improving the academic and functional achievement of the child with a disability to facilitate his/her movement from school to post-school activities, i.e., post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

Transition services are to be based upon the individual student's needs, taking into account the student's strengths, preferences, and interests, and include instruction, related services, community experiences, development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation. When a student does not attend an IEP meeting during which transition is discussed, the IEP team strives to ensure that the student's preferences and interests are considered.

As part of secondary transition, when a student with a disability is graduating or will exceed the age of eligibility, the HEP is to provide that individual with a summary of his/her academic achievement and functional performance. This summary is to include recommendations on how to assist the student in meeting postsecondary goals. The education director or designee will document the summary's

development and ensure its content addresses the child's academic and functional performance. In addition, the student will be asked to sign a copy of the summary to verify having received a copy.

- I. Placements** - The educational placement of each child with a disability is determined at least annually and is based on his/her IEP. The various alternative placements are available, to the extent necessary, to implement the IEP for each child with a disability. In selecting the LRE, consideration is given to any potentially harmful effect on the child or on the quality of services which he needs. Notably, the placement decision includes consideration of the child's social and personal needs, as well as the child's level of educational functioning.

In the event that it is determined that educational interpreting services are appropriate for the hard of hearing and/or child with deafness, qualified personnel shall be provided in accordance with the child's mode of communication.

The enrollment of a child with a disability in an HEP due to hospitalization normally precludes consideration of educational placement as close as possible to the child's home or in the school which he/she would attend if nondisabled. For those children with disabilities who are placed in a SOP as a long-term residence, the LEA of the parent's residence remains responsible for ensuring that the child receives a FAPE. In such cases, the HEP shall ensure that the LEA of the parent's residence is advised of the child's admission, status, and meetings associated with the child receiving a FAPE.

Students who are unable to participate or who require modification(s) in the school day because of medical reasons will have a modification/waiver on file describing justifications, objectives, and timelines for the modification/waiver. This form shall be signed by a physician and/or designee.

- J. Private School Placements** - While the HEPs are not placement agencies, the programs may work with LEAs on cases where private school placement is being considered. Working in tandem with LEAs, the HEPs shall initiate and conduct a meeting in accordance with the requirements related to the development of an IEP before a child with a disability is placed in or referred to a private school or facility that is licensed or has a certificate to operate.

In cases where a child is presently receiving services of a private school or facility that is licensed or has a certificate to operate or where the parent and the LEA agree, prior to the development of an IEP, that a private school or facility may be required when the IEP is completed, the HEP shall ensure that representatives of the LEA and the private school or facility attend the meeting. If the representatives cannot attend, the HEP shall use other methods to ensure participation by the LEA and private school or facility, including individual or conference telephone calls. Whenever an eligible child with a disability is placed in an approved private school or facility by an LEA, all rights extended to children educated in public school programs shall be available to him/her, including participation in state or division-wide testing. When a child with a disability is placed in a private school or facility that is out of state, the placement shall be processed through the Interstate Compact on the Placement of Children, in accordance with the *Code of Virginia*.

Recognizing that following discharge some children may enter a private school or facility, it is important to understand that meetings to review and revise the child's IEP may be initiated and conducted by the public school or facility at the discretion of the child's LEA. Further, it is the responsibility of the LEA to ensure that the parent and an LEA representative are involved in any decision about the child's IEP and that they agree to any proposed program changes before those changes

are implemented. The child's LEA remains responsible for compliance when a private school or facility implements a child's IEP.

- K. Children with Disabilities Convicted as Adults and Incarcerated in Adult Prisons** - The obligation to make a FAPE available to all children does not apply to children with disabilities, aged 18 to 21, inclusive, who, if in their last educational placement prior to their incarceration in an adult correctional facility, were not identified as being children with disabilities and did not have IEPs. This exception does not apply to those children with disabilities, aged 18 to 21, inclusive, who had been identified as children with disabilities and had received services in accordance with their IEPs but who left school prior to their incarceration or did not have IEPs in their last educational setting.

For children with disabilities convicted under state law as adults and incarcerated in adult prisons, the following requirements do not apply:

1. participation in state and districtwide assessment; and
2. statements of transition planning and services.

The IEP team may modify the IEP or placement if the state has demonstrated security or "compelling penological interest" that cannot otherwise be accommodated.

- L. Children with Disabilities in Religious or Other Private Schools** - When a child with a disability who attends a parochial school or other private school enrolls in an HEP, the program shall initiate and conduct meetings to develop, review, and/or revise an IEP for the child. Efforts will be made to ensure that a representative of the child's school attends each meeting. If a representative of the school cannot attend, the HEP shall use other methods, including individual or conference telephone calls, to ensure participation by the private school.

- M. Children with Disabilities on Homebound Instruction** - Homebound instruction must be based on certification by a licensed physician or clinical psychologist and is available only to children who are confined for periods that would prevent normal school attendance. Homebound instruction shall be deemed appropriate for a child with a disability only when such placement is stipulated in the child's IEP and is in accordance with the requirements of the LRE.

In revising a child's IEP to accommodate the need for homebound instruction, it is a function of the IEP team to determine the number of hours of service.

IX. Procedural Safeguards

- A. Opportunity to Examine Records** - The HEPs must establish, maintain, and implement procedural safeguards as delineated in the VIRGINIA PROCEDURAL SAFEGUARDS NOTICE (Revised August 2009). Once a year parents of children with disabilities are furnished with a full explanation of all the procedural safeguards afforded to them, including their right to
1. inspect and review all education records with respect to the identification, evaluation, and educational placement of the child and the provision of a FAPE;
 2. participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a FAPE;
 3. receive notice early enough to ensure that they have the opportunity to participate in meetings. Such notice shall
 - a. indicate the purpose, date, time, and location of the meeting and who will be in attendance;
 - b. inform them that at their discretion or at the discretion of the HEP, other individuals who have knowledge or special expertise regarding the child,

- including related services personnel, as appropriate, may participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a FAPE;
- c. inform them that the determination of the knowledge or special expertise shall be made by the party who invited the individual; and,
 - d. in the case of a child who was previously served under Part C, inform them that an invitation to the initial IEP team meeting shall, upon parental request, be sent to the Part C service coordinator or other representatives of Part C to assist with the smooth transition of services.
4. be members of the IEP team that makes decisions on the educational placement of their child or any Comprehensive Services Act team that makes decisions on the educational placement of their child. If neither parent can participate in a meeting in which a decision is going to be made regarding educational placement, other methods to ensure their participation, including individual or conference telephone calls or video conferencing, shall be used. It follows that the HEP shall take whatever action is necessary to ensure that parents understand and are able to participate in any group discussions relating to the educational placement of their child, including arranging for an interpreter for a parent with deafness or whose native language is other than English.

A parent must sign an Educational Release Form prior to initial educational screening and/or the disclosure of any confidential information to persons other than officials within the medical setting. When signing this form, the parent is informed of his/her right to inspect and review the child's educational file and all records involving the identification, evaluation, educational placement, and the provision of a FAPE within a reasonable period of time.

- B. Independent Educational Evaluation (IEE)** - The parent of a child with a disability has the right to obtain an IEE. Upon request, the HEPs provide the parent with information about where an IEE can be obtained and the applicable agency criteria for IEEs. If the request for an IEE is the result of a parent disagreeing with an evaluation component obtained by an HEP, the IEE is provided at public expense. If a parent requests an IEE at public expense, the HEP, without unnecessary delay, shall either
- 1. initiate a due process hearing to show that its evaluation is appropriate; or
 - 2. ensure that an IEE is provided at public expense unless it is demonstrated in a due process hearing that the evaluation obtained by the parent does not meet the HEP's criteria.

Should the HEP initiate a due process hearing and the final decision be that the HEP's evaluation is appropriate, the parent still has the right to an IEE, but not at public expense. While the HEP may ask for the parent's reasons for objecting to the public evaluation, an explanation may not be required. In any case, the HEP may not unreasonably delay in either providing the IEE at public expense or in initiating a due process hearing to defend the public evaluation. Of note is the fact that the parent is allowed only one IEE at public expense each time a public education agency conducts an evaluation component with which the parent disagrees.

In all instances where an IEE is conducted at public expense, the criteria under which the evaluation is obtained, including location of the evaluation and the qualifications of the examiner, must be the same as those which the HEPs use when initiating an evaluation, to the extent those criteria are consistent with the parent's right to an IEE. Except for these criteria, the HEP may not impose conditions or timelines for obtaining an IEE at public expense.

If the parent obtains an IEE at public expense or shares with the HEP an evaluation obtained at private expense, the results of the evaluation, if it meets

HEP criteria, shall be considered by the HEP in any decision regarding the provision of a FAPE and may be presented by any party as evidence at a hearing.

If a hearing officer requests an IEE for an education component as part of a hearing on a due process complaint, it must be at public expense.

- C. Prior Notice** - Written notice must be provided in the native language or other mode of communication of the parent. Such notice must be given to the parent within a reasonable time before the HEP proposes or refuses to conduct an evaluation or initiate or change a student's identification, educational placement (including graduation with a standard or advanced studies diploma), or the provision of a FAPE. The notice shall include
1. a description of the action proposed or refused by the HEP;
 2. an explanation of why the HEP proposes or refuses to take the action;
 3. a description of any other options the team considered and the reasons for the rejection of those options;
 4. a description of each evaluation procedure, assessment, record, or report the HEP used as a basis for the proposed or refused action;
 5. a description of any other factors relevant to the HEP's proposal or refusal;
 6. a statement that the parent of a child with a disability has protection under the VIRGINIA PROCEDURAL SAFEGUARDS NOTICE (revised August 2009) and, if the notice is not an initial referral for evaluation, the means by which a copy of the above referenced procedural safeguards can be obtained; and
 7. sources for the parent to contact in order to obtain assistance in understanding these provisions.

The notice shall be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the HEP shall take steps to ensure that

1. the notice is translated orally or by other means to the parent in his/her native language or other mode of communication;
2. the parent understands the content of the notice; and
3. there is written evidence that the above requirements have been met.

In addition to receiving a copy of the VIRGINIA PROCEDURAL SAFEGUARDS NOTICE (Revised August 2009) one time a school year, parents receive a copy upon

1. the child's initial referral for or parental request for evaluation;
2. the receipt of the first state complaint during a school year;
3. the receipt of the first request for a due process hearing during a school year;
4. their request for an additional copy; and
5. the date on which a decision is made to make a disciplinary removal that constitutes a change in placement.

The notice includes a full explanation of all of the procedural safeguards available relating to

1. independent educational evaluation;
2. prior written notice;
3. parental consent;
4. access to educational records;
5. opportunity to present and resolve complaints through the due process procedures;
6. the availability of mediation;
7. the child's placement during pendency of due process proceedings;

8. procedures for students who are subject to placement in an interim alternative educational setting (IAES);
9. requirements for unilateral placement by parents of children in private schools at public expense;
10. due process hearings, including requirements for disclosure of evaluation results and recommendations;
11. civil actions, including the time period in which to file those actions;
12. attorneys' fees; and
13. the opportunity to present and resolve complaints through the state complaint procedures, including
 - a. the time period in which to file a complaint;
 - b. the opportunity for the HEP to resolve the complaint; and
 - c. the difference between the due process and the state complaint procedures, including the applicable jurisdiction, potential issues, and timelines for each process.

D. Parental Consent - Informed parental consent is required before conducting an initial evaluation or reevaluation, including a FBA if such assessment is not a review of existing data conducted at an IEP meeting; the child's initial eligibility determination or any change in categorical identification; the initial provision of special education and related services; any revision in the child's IEP services; any partial or complete termination of special education and or related services, except for graduation with a standard or advanced studies diploma; the provision of a FAPE to children with disabilities who transfer between public agencies in Virginia or transfer to Virginia from another state; accessing public benefits or insurance or private insurance proceeds to provide special education and related services; or inviting a representative of any participating agency that is likely to be responsible for providing or paying for secondary transition services to an IEP meeting.

Notably, there are instances when parental consent is not necessary:

1. in conjunction with screening for the purposes of determining appropriate instructional strategies for curriculum implementation;
2. for reviewing existing data as part of a child's evaluation or reevaluation, including a FBA;
3. before administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, permission is required of the parents of all children;
4. before a teacher's observation or ongoing classroom evaluations;
5. before administering a test or other evaluation that is used to measure progress on the child's IEP goals; or
6. before conducting an initial evaluation of a child who is a ward of the state and who is not residing with his/her parents if
 - a. the HEP cannot discover the whereabouts of the parent despite reasonable efforts;
 - b. the rights of the parents have been terminated; or
 - c. the rights of the parents have been subrogated by a judge and an individual appointed by the judge to represent the child has consented to the initial evaluation.

If a parent revokes consent, that revocation is not retroactive in accordance with the definition of "consent."

E. Notice to Biological or Adoptive Parent of Child in Foster Care - It is the responsibility of the HEP to provide written notice to the biological or adoptive parent of a child in foster care, informing him/her that the HEP is entitled to deal with and rely upon the actions of the foster parent with regard to the child's

special education and related services until such time that the biological or adoptive parent attempts to act as the parent. The notice must be sent to the last known address of the biological or adoptive parent. Notably, such notice need not be sent to the biological or adoptive parent whose residual parental rights have been terminated.

With regard to the timing of the written notice, the HEP should send this notice to the biological or adoptive parents of children in foster care who are enrolled at the beginning of each school year. If the foster care placement occurs after the school year starts, the HEP should send this written notice to the biological or adoptive parent immediately upon learning of a child's foster care placement. Further, if the foster care placement changes during the school year, the HEP should send this written notice to the biological or adoptive parent immediately upon learning of the change in foster care placement.

The written notice to the biological or adoptive parent should

1. explain the reason for the notice;
2. explain the consequences of failing to respond;
3. invite a response;
4. provide contact information for responding;
5. invite correction of information;
6. document provision of notice; and
7. provide basic, relevant student information.

It is advisable for the HEP to send a copy of any IDEA-mandated notice addressed to the foster parent to the biological or adoptive parents as well. Providing parallel notice may provide protection against parental allegations of a denial of rights particular to a specific event and against claims by the biological or adoptive parent that he or she has not received the written notice.

HEP personnel should deliver the written notice by any reasonable means which may include

1. first class, postage prepaid mail;
2. hand-delivery or some form of personal service or posting if the last known address for the biological or adoptive parent does not have a mail receptacle;
or
3. e-mail when e-mail qualifies as an "address."

The law does not specify that "address" is necessarily a residence address; therefore, an employer's address may, in some instances, qualify. In addition, the "last known address" requirement does not impose on the HEP a duty to investigate the current whereabouts of the biological or adoptive parent if the notice directed to the "last known address" is returned or otherwise proves undeliverable.

This written notice is intended to prevent a delay in the provision of a FAPE for a child in foster care and is a provision specific to the Commonwealth because, in special education matters, time is of the essence. As a result, and consistent with federal and state mandates, the HEP is not required to wait for the biological or adoptive parent to respond to the notice prior to relying on the actions of a foster parent. The burden of coming forward lies with the biological or adoptive parent, and the HEP is entitled to rely on the participation of the foster parent until such time as the biological or adoptive parent comes forward.

Due to the practicalities involved, it may be prudent to send a copy of the notice to the child's social worker. The social worker will, in most instances, be the one constant link between the child and the biological or adoptive parent during the

child's tenure in foster care. Indeed, the social worker may have the best information related to the whereabouts of the biological or adoptive parent. In the event that the biological or adoptive parent notifies the HEP of his/her intent to assert the parent's IDEA-parental right, the biological or adoptive parent must be presumed to be the parent for IDEA purposes.

- F. Parental Refusal** - If the parent of an enrolled child refuses consent for initial evaluation or fails to respond to a request to provide consent, the HEP may, but is not required to, continue to pursue those evaluations by using the procedures for due process or mediation. Similarly, if the parent of an enrolled child refuses consent for reevaluation, the HEP may, but is not required to, continue to pursue the evaluation via mediation or due process. Informed parental consent need not be obtained for reevaluation if the parent fails to respond to the HEP's request for reevaluation and the HEP has made reasonable efforts to obtain consent. If the HEP opts not to pursue the initial evaluation or the reevaluation, the HEP does not violate its eligibility determination obligations.

Consent for initial evaluation may not be construed as consent for the initial provision of special education and related services. Rather, the HEP must obtain informed consent from the parent before providing initial special education and related services to the child. If the parent fails to respond to a request for or refuses to consent to the initial provision of special education and related services or if the parent revokes consent for continuing special education and related services, the HEP

1. must provide written prior notice before ceasing the provision of special education and related services;
2. may not use mediation or due process to attempt to obtain an agreement or a ruling that services be provided the child;
3. will not be in violation of FAPE requirements; and
4. is not required to convene an IEP meeting or develop an IEP for the child.

It is the responsibility of the HEP to demonstrate reasonable efforts to secure parental consent and to document its attempts. These include

1. detailed records of telephone calls made or attempted and the results of those calls; and
2. copies of correspondence (written, electronic, or facsimile) sent to the parent and any responses received.

- G. Parental Rights Regarding Use of Public or Private Insurance** - If seeking to access a child's public benefits or insurance to pay for services required for FAPE, HEPs must provide notice to the parent and obtain parental consent each time that access is sought. In such cases, the HEPs' parental notice must contain specific elements, including the parent's right to refuse to allow access and an assurance that such refusal does not relieve the HEPs of their responsibility to provide FAPE to the child at no cost.

- H. Surrogate Parent Procedures** - A surrogate parent represents the educational interests of a child, birth to 21, inclusive, suspected of having or determined to have a disability when
1. no parent or person authorized to act as parent can be identified;
 2. the HEP after reasonable efforts cannot discover the whereabouts of a parent;
 3. the child is a ward of the state or an unaccompanied homeless youth; or
 4. the HEP receives written notification that a child who has reached the age of majority is not competent to provide informed consent and no family member is available to serve as the child's educational representative.

In addition, in cases where the child is a ward of the state, the judge overseeing the child's case may appoint a surrogate parent as the educational representative of the child.

When a child enrolls in an HEP, it is the responsibility of the HEP staff member to determine whether the child needs a surrogate parent. Such determination should be made in cooperation with representatives of the social work department and the agency or person having custody of the child. If a surrogate parent has not previously been appointed for the child by his/her LEA or if the surrogate is not available during a child's hospitalization, one is appointed by the education director or designee within 30 days after such determination.

In the event the child is an unaccompanied homeless youth, the HEP may appoint appropriate staff from an emergency shelter, transitional shelter, independent living program, or street outreach program to serve as a temporary surrogate parent, even though the individual is an employee of an agency involved in the education or care of the child, until a qualified surrogate parent can be appointed. The person must meet the other requirements for being a surrogate parent and may only serve until a surrogate parent can be assigned.

The education director or designee is responsible for developing and maintaining a list of individuals who are qualified to serve as surrogate parents. Individuals who are not on an HEP's surrogate parent list may be eligible to serve, subject to the HEP's discretion. In such situations, the needs of the individual child and the availability of qualified persons who are familiar with the child and who would otherwise qualify shall be considered. In addition to considering appointing a relative, the HEP should consider the appropriateness of the child's participation in the selection of his/her surrogate parent.

To be qualified, a person appointed as a surrogate parent must have no personal or professional interest that conflicts with the interests of the child; must have knowledge and skills that ensure adequate representation of the child; must not be an employee of the VDOE or any other agency which is involved in the education or care of the child (a person who otherwise qualifies to be a surrogate parent is not an employee of the agency solely because he is paid by the agency to serve as a surrogate parent); and must be the age of majority.

The appointment having been effected, the HEP notifies in writing the child, as appropriate to the disability; the surrogate parent-appointee; the person charged with responsibility for the child; the custodial state agency charged with responsibility for the child; and the VDOE.

The surrogate parent is given all of the rights normally accorded to natural parents. This includes the right to inspect and review the child's educational file upon request; to challenge the accuracy of information in the record; and to provide written consent for evaluation, placement, or program changes. The surrogate parent also has all of the responsibilities of natural parents. For example, the surrogate parent is to sign the Educational Release Form before home school contact is made. If the surrogate parent is not available to sign the document, telephone permission is obtained and recorded in the child's file. The release form, with an appropriate cover letter, is then mailed to the surrogate parent for signature.

Further, the surrogate parent represents the child in all matters relating to the identification, evaluation, or educational placement of the child and the provision of a FAPE. Both the surrogate parent and a representative of the agency having legal custody of the child are invited to participate in the IEP planning conference. The surrogate parent, however, signifies approval of the finalized IEP. Copies of the IEP are sent to the surrogate parent and to the custodial

agency. All other HEP parental correspondence is directed to the surrogate parent and copied to the custodial agency. In addition, copies of all school correspondence are sent to the custodial agency.

Surrogate parents typically serve for the duration of the school year or for the period of the child's hospitalization. The education director or designee reviews a surrogate parent appointment at the time of the child's discharge or at the conclusion of each school year and renews or does not renew the appointment as appropriate. In the event a child needs a surrogate parent during the summer, the education director or designee arranges to extend the surrogate parent appointment.

It should be noted that there may be conditions which warrant changing or terminating the assignment of a surrogate parent before the appointment has expired. Specifically, such assignment may be terminated when one or more of the circumstances occur as follows:

1. the child reaches the age of majority and rights are transferred to the child or to an educational representative who has been appointed for the child;
2. the child is found no longer eligible for special education services and the surrogate parent has consented to the termination of services;
3. legal guardianship for the child is transferred to a person who is able to carry out the role of the parent;
4. the parent(s), whose whereabouts were previously unknown, are now known and available; or
5. the appointed surrogate parent is no longer eligible.

Established procedures provide the right to request a hearing to challenge the qualifications or termination of a surrogate assignment if the latter occurs prior to the end of the term of appointment.

At the time of a child's discharge, the hospital teacher is responsible for notifying the education director or designee in order to ensure that an appropriate thank you letter is sent to the surrogate parent.

- I. **Age of Majority** - It is the responsibility of the HEPs, beginning at least one year before a child reaches the age of eighteen (the age of majority in Virginia), to inform him/her of the transfer of all parental rights to him/her upon reaching the age of majority. This preliminary notice shall be provided to both the child and the parent as shall the subsequent notice of the transfer of rights when the individual reaches the age of majority. The preliminary notice shall also explain that procedures exist for appointing the parent or, if the parent(s) are not available, another appropriate individual to represent the educational interests of the student throughout his/her eligibility for special education and related services if the student is determined not to have the ability to provide informed consent with respect to his/her educational program.

It follows that under Virginia law, when a child reaches the age of eighteen, he/she is presumed to be capable of making his/her own decisions, including educational decisions. The HEPs or the adult student may, however, continue to invite the parent, as an interested party, knowledgeable of the student's abilities, to participate in meetings where decisions are being made regarding the adult student's educational program.

A student who has reached the age of eighteen shall be presumed to be a competent adult unless one of the following actions has been taken:

1. the adult student is declared legally incompetent or legally incapacitated by a court of competent jurisdiction and a representative has been appointed by the court to make decisions for the student;
2. the adult student designates, in writing, by power of attorney or similar legal document, another competent adult to be the student's agent to receive notices and to participate in meetings and all other procedures related to the

student's educational program. HEPs shall rely on such designation until notified that the authority to act upon the designation is revoked, terminated, or superseded by court order or by the adult student;

3. the adult student is certified, according to the following procedures, as unable to provide informed consent. Any adult student who is found eligible for special education and does not have a representative appointed by a court of competent jurisdiction to make decisions on the adult student's behalf may have an educational representative appointed based on the following certification procedure.
 - a. Two professionals must, based on a personal examination or interview, certify in writing that the adult student is incapable of providing informed consent and has been informed of this decision. One of the professionals must be a medical doctor licensed in the state where the doctor practices medicine; a physician's assistant whose certification is countersigned by a supervising physician; or a certified nurse practitioner. The other professional must be a medical doctor licensed in the state where the doctor practices medicine; a licensed clinical psychologist; a licensed clinical social worker; an attorney who is qualified to serve as guardian ad litem for adults under the rules of the Supreme Court of Virginia; or a court-appointed special advocate for the adult student. Notably, the individuals who provide the certification may not be employees of the HEP currently serving the adult student or be related by blood or marriage to the adult student.
 - b. Being incapable of providing informed consent means that the individual is unable to
 - 1) understand the nature, extent, and probable consequences of a proposed educational program or option on a continuing or consistent basis;
 - 2) make a rational evaluation of the benefits or disadvantages of a proposed educational decision or program as compared with the benefits or disadvantages of another proposed educational decision or program on a continuing or consistent basis; or
 - 3) communicate such understanding in any meaningful way.

The certification that the adult student is incapable of providing informed consent may be made as early as 60 days prior to the student's eighteenth birthday or 65 business days prior to an eligibility meeting if the adult student is undergoing initial eligibility for special education services. The certification shall state when and how often a review of the student's ability to provide informed consent shall be made and why that time period was chosen.

Any time a certification is challenged, the adult student's ability to provide informed consent must be recertified. Challenges can be made by the student or by anyone with a bona fide interest and knowledge of the adult student, except that challenges cannot be made by HEP employees. Challenges must be provided in writing to the HEP education director, who then must notify the adult student and current appointed representative. Upon receipt of a written challenge to the certification

1. by the adult student, the HEP may not rely on an educational representative for any purpose until a designated educational representative is affirmed by a court of competent jurisdiction.
2. by anyone with a bona fide interest and knowledge of the adult student, the HEP may not rely on an educational representative until a more current written certification is provided by the appointed educational representative. Certifications provided after a challenge are effective for 60 days unless a proceeding in a court of competent jurisdiction is filed challenging and requesting review of the certifications. The HEP shall not rely upon the

designated educational representative until the representative is affirmed by the court or the adult student, based on certification by written order from a judge of competent jurisdiction, is admitted to a facility for the training, treatment, and habilitation of the intellectually disabled. The HEP serving the adult student may rely on the judicial certification and appoint an educational representative to act on the student's behalf.

When the HEP receives written notification that an adult student has been certified as being incapable of providing informed consent or receives judicial certification as above defined, the HEP shall designate the parent of the adult student to act as an educational representative of the adult student unless the student is married, in which event the student's adult spouse shall be designated as educational representative. If the parent or adult spouse is not available and competent to provide informed consent, the education director or designee shall designate a competent individual from among the following: an adult brother or sister; an adult aunt or uncle; or a grandparent. If no family member from these categories is available and competent to serve as the adult student's educational representative, then a person trained as a surrogate parent shall be appointed to serve as the educational representative by the HEP.

X. Complaint Resolution Procedures and Due Process Hearings

- A. Complaints** - Any individual, organization, or individual from another state has the right to file complaints, which allege a violation of the rights of parents of children with disabilities, with the VDOE. A complaint must address an action that occurred not more than one year prior to the date that the complaint is received.

Upon request, a Special Education Complaint Form shall be made available. A party filing a state complaint may, but is not required to, use the VDOE's model complaint form. However, to be considered sufficient, the complaint must contain all required elements. It shall be in writing and signed by the complainant and include

1. a statement that the HEP or the VDOE has violated a requirement of the IDEA or Virginia Regulations;
2. the facts upon which the complaint is based;
3. all relevant documents and supporting information; and
4. the complainant's contact information.

Notably, complaints can be submitted via postal mail, delivery service, facsimile, by hand, or e-mail. Complaints received by e-mail shall be considered as being received with an electronic signature.

If alleging violations regarding a specific child, the complaint must also include

1. the name and address of the child;
2. the name of the school the child is attending;
3. a description of the nature of the problem of the child, including the facts relating to the problem; and
4. a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

In the case of a homeless child or youth, the complaint must include available contact information for the child and the name of the school the child is attending.

When submitting the Special Education Complaint Form, it is the responsibility of the complainant to forward a copy of the complaint to the HEP serving the child at the same time the complaint is filed with VDOE's Office of Dispute Resolution and Administrative Services (ODRAS). If in reviewing the complaint, the ODRAS determines it to be insufficient, the complainant and HEP are notified. The

complainant is given directions for resubmission to the ODRAS. Resubmitted complaints are treated as new complaints.

If any individual, other than a parent, a student who has reached the age of majority, or their attorney, files a complaint, the ODRAS notifies the complainant that it will inform such parent or student of the complaint's receipt and provide copies of the complaint; relevant correspondence, if any; and a copy of the Complaint Resolution Procedures. Unless a release of information is on file with the ODRAS, the complainant receives no further written communication resulting from the complaint process.

Within 7 business days of the receipt of a complaint, the ODRAS reviews the complaint and supporting documentation and proceeds to send a Notice of Complaint, providing written notice of receipt of the complaint, to both the complainant and the HEP against which the violation is alleged, along with a copy to the VDOE official responsible for SOPs. The ODRAS also provides the VDOE official responsible for SOPs with a copy of the letter of complaint as well as the supporting documentation and offers technical assistance to resolve the complaint. A copy of the Complaint Resolution Procedures is also sent to all parties to the complaint.

In the Notice of Complaint, the ODRAS identifies the relevant issues, in reference to the applicable laws and regulations, and requests that the HEP respond in writing within 10 business days of its receipt. A copy of the HEP's response, along with all submitted documentation, must be sent simultaneously by the HEP to the complainant, if the complaint was filed by the parent of the child, the student who has reached age of majority, or their attorney. If the complaint was filed by another individual, the HEP must simultaneously send the response and submitted documentation to that individual if a release of information signed by the parent or student who has reached the age of majority has been provided. Of note is the fact that if the HEP does not submit its written response within the first 10 business days following receipt of the Notice of Complaint, the ODRAS sends a second notice, advising the HEP that failure to respond within 7 business days of the date of such notice may result in appropriate sanctions.

The Notice of Complaint sent to the complainant and the HEP must provide the parties with an opportunity to submit additional information, either orally or in writing, about the allegations in the complaint. The ODRAS establishes a timeline in the Notice of Complaint for submissions of any additional information so as not to delay completing the investigation within the 60-day regulatory timeline.

With the initial notification, the ODRAS advises both the complainant and the HEP that the HEP has 10 business days after receipt of the Notice of Complaint in which to resolve the complaint on the local level or to submit the HEP's written response to the ODRAS. The HEP has the opportunity, working cooperatively with the VDOE official responsible for SOPs, to propose a resolution of the complaint within this time period. If necessary, the ODRAS will grant an extension of the 10-business day timeline for the parties to resolve the complaint on the local level, sending both parties notification of the extension. Any extension granted must not affect the 60-day timeline for the VDOE to resolve the complaint. Also, an extension of the early resolution period does not affect the HEP's obligation to submit its written response within 10 business days of receipt of the Notice of Complaint unless the time period is otherwise extended. Early resolution may include use of the Virginia Special Education Mediation System available at no cost to the parties through the VDOE.

If the HEP is able to resolve the complaint, then the HEP must provide documentation of the resolution. The resolution statement must state the details of

the resolution and indicate that the parent and the HEP have agreed to the resolution and that all issues raised in the complaint have been satisfactorily resolved. For complaints not involving a specific student, the resolution statement

must state the details of the resolution and must indicate that the complainant and the HEP have agreed to the resolution and that all issues raised in the complaint have been satisfactorily resolved. Upon receipt of this documentation of resolution, the ODRAS closes its investigation of the complaint.

If, conversely, the HEP is unable to resolve the complaint, the HEP must provide the ODRAS with a written response to the alleged violation(s) of federal and state law and regulations, along with the documentation requested by the ODRAS, within the above noted 10-business day timeline.

The ODRAS conducts an investigation of the complaint, which includes a complete review of the relevant documentation and, if deemed necessary, may also involve an independent on-site investigation. If the complaint is also the subject of a due process hearing or if it contains multiple issues of which one or more are part of the due process hearing, the ODRAS shall

1. set aside any part of the complaint being addressed in the due process hearing until the hearing's conclusion; and
2. resolve any issue in the complaint that is not part of the due process hearing involving the same parties.

A time limit of 60 days is allowed after receipt of the written complaint in order to carry out the investigation and to resolve the complaint. An extension of the 60-day time limit may occur if

1. exceptional circumstances exist with respect to a particular complaint; or
2. the parties involved agree to extend the time to engage in mediation or other alternative means of dispute resolution.

The VDOE notifies both parties to the complaint in writing of the nature of the extension and the extended time limit.

Upon completion of the investigation, the ODRAS determines whether the HEP complied with the applicable special education laws and regulations. Determination of compliance or noncompliance on each issue is based upon the facts and applicable law, regulations, or standards. The ODRAS notifies the parties in writing of the findings, along with the basis for such findings. Further, the VDOE ensures that the final decision of the ODRAS is effectively implemented, if needed, through

1. technical assistance activities;
2. negotiations; and
3. corrective actions to achieve compliance.

Depending on the nature of the issues, they may be referred by the ODRAS to legal counsel for the VDOE, other VDOE staff, or the US Department of Education for review.

The ODRAS sends a Letter of Findings jointly to the parent or student who has reached the age of majority and the VDOE official responsible for SOPs. It follows that the findings are issued only to the parent, the student who has reached the age of majority, and the HEP unless the complainant has obtained and filed the necessary consent for release of the information. The Letter of Findings summarizes the complaint issues; relevant facts; the assessment of facts based on federal and state laws and regulations and applicable case decisions/rulings/opinions; and conclusions. If the HEP is found in compliance, the complaint file is closed if no appeal is requested. Should the HEP be found in noncompliance, the Letter of Findings specifies the requested corrective action(s) to be taken. The complaint file remains open until corrective action is obtained and approved by the ODRAS.

In resolving a complaint in which a failure to provide appropriate services is found, the VDOE addresses

1. the remediation of the denial of those services, including, as appropriate, compensatory services, the awarding of monetary reimbursement, or other corrective action appropriate to the needs of the child; and
2. the appropriate future provision of services for all children with disabilities.

If the Letter of Findings determines that the HEP was not in compliance with the applicable laws and regulations, the ODRAS specifies the steps that must be taken by the HEP to bring it into compliance. When the HEP develops its Corrective Action Plan (CAP), it must include timelines to correct violations not to exceed 30 business days unless circumstances warrant otherwise. The plan of action also must include a description of all changes contemplated and is subject to approval by the VDOE.

Should the HEP not initiate the necessary corrective action within the time required in the Letter of Findings, the matter may be referred to the Superintendent of Public Instruction and then to the Board of Education for a hearing. A decision may be made that state and federal funds for the education of children with disabilities will not be made available until there is compliance with the applicable law and/or regulations.

The ODRAS reviews the corrective action plan. Once it is approved, the ODRAS notifies the VDOE official responsible for SOPs and the complainant that the complaint file is closed. The VDOE is responsible for ensuring that the HEP implements the CAP. The ODRAS tracks and ensures the CAP implementation, which includes periodic follow-up activities, either by letter or on-site visit if necessary, in cooperation with the VDOE-assigned Technical Assistance Specialist.

The VDOE reports findings of noncompliance and corresponding recommendations to the Superintendent of Public Instruction or designee for review. If the Superintendent of Public Instruction, after reasonable notice and opportunity for a hearing by the Virginia Board of Education, finds that an HEP has failed to comply with applicable laws and regulations, and determines that compliance cannot be secured by voluntary means, the superintendent then issues a decision in writing stating that state and federal funds for the education of children with disabilities will not be made available to that HEP until there is full compliance with the applicable law or regulation.

Under the Freedom of Information Act and subject to the confidentiality requirements of the Family Educational Rights and Privacy Act (FERPA) and the IDEA – Part B, the VDOE may be required to release information relative to the complaint upon completion of the Letter of Findings and closure of the complaint file.

Parties to the complaint procedures have the right to appeal the final decision to the VDOE in accordance with procedures established by the VDOE. Appeals must be filed within 30 days of the date on which the ODRAS issues its findings. A copy of the Complaint Appeal Procedures is included with each Letter of Finding.

B. Due Process Hearing - When disputes arise between a parent and an HEP related to the

1. identification of a child with a disability, including initial eligibility, any change in categorical identification, and any partial or complete termination of special education and related services;
 2. evaluation of a child with a disability (including disagreements regarding payment for an IEE);
 3. educational placement and services of the child; or
 4. provision of a FAPE to the child,
- VDOE's impartial special education due process hearing system will be used to resolve the disputes.

The statute of limitations for filing a request is not more than two years from when the parent or HEP knew or should have known of the alleged violation. Of note is the fact that the timeline does not apply if the parent was prevented from filing due to specific misrepresentation by the HEP indicating that the problem had been resolved or if the HEP withheld information to which the parent had a right under the federal and state requirements governing special education. Similarly, a HEP may initiate a due process hearing to resolve a disagreement when the parent withholds or refuses to consent for an evaluation or an action that requires parental consent to provide services to a student who has been identified as a student with a disability or who is suspected of having a disability. However, a HEP may not initiate a hearing to resolve parental withholding or refusal of consent for the initial provision of special education to the child.

In cases involving disciplinary actions, the parent of a student with a disability may request an expedited due process hearing if the parent disagrees with the manifestation determination regarding whether the child's behavior was a manifestation of the child's disability or any decision regarding placement under the disciplinary procedures. Likewise, in such cases, the HEP may request an expedited hearing if the HEP believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others.

A request for a hearing initiated by a parent must be made in writing to the VDOE, with a copy delivered to the HEP at the same time. If the request is initiated by a HEP, it is the HEP's responsibility to advise the parent and the VDOE in writing of this action. The 45-day timeline does not start until all the above parties have the due process hearing request.

A Request for Due Process Hearing form is available to assist the parents in filing such requests. Notably, parents and other parties may use another form when requesting a due process hearing, so long as the request contains all the content requirements. It follows that the party requesting the due process hearing needs to understand that there may not be a hearing until the notice with all the required elements is filed. It is also important that the due process notice be complete as issues not included in the document cannot be introduced in the hearing unless the other party agrees at least 5 days before the hearing. In cases where an amended notice is filed, the due process hearing timeline recommences upon the filing of the amended notice. The notice must include

1. the name of the child;
2. the address of the residence of the child (in the case of a homeless child, available contact information should be furnished);
3. the name of the school/program the child is attending;
4. a description of the child's issue(s) relating to the proposed or refused initiation or change, including facts relating to the issue(s); and
5. a proposed resolution of the problem to the extent known and available to the parent at the time of the notice.

The due process complaint notice is deemed to be sufficient unless, within 15 days of receiving the notice, the non-complaining party notifies the hearing officer in writing that the notice is insufficient. Copies of the challenge must be sent to the other party and the VDOE. A challenge to the sufficiency of the notice suspends the timeline for completion of a due process hearing. Once the non-complaining party notifies the hearing officer that the notice is insufficient, the hearing officer must make a determination regarding the notice's sufficiency within 5 days and notify the parties immediately in writing. If the notice is sufficient, the applicable timeline recommences. It follows that the complaining party may amend its due process complaint notice only if

1. the other party provides written consent to the amendment and is given the opportunity to resolve the complaint via a resolution meeting; or
2. the hearing officer grants permission not later than 5 days before the due process hearing occurs.

Once an amended notice is filed, the applicable timelines for the due process hearing will recommence.

Upon receipt of a Request for a Due Process Hearing, an HEP shall inform the parent or parents of the availability of mediation and of any free or low-cost legal services and other relevant services in the area. The parent shall also be provided with a copy of VIRGINIA PROCEDURAL SAFEGUARDS NOTICE (Revised August 2009) upon receipt of the parent's first request for a due process hearing in a school year. Further, if the HEP has not sent prior written notice to the parent regarding the issue raised by the parent, the HEP must respond within 10 days of receiving the notice. The response shall include

1. an explanation of why the HEP proposed or refused to take the action raised in the complaint;
2. a description of other options that the IEP team considered and the reasons why those options were rejected;
3. a description of each evaluation procedure, assessment, record, or report the HEP used as the basis for the proposed or refused action; and
4. a description of the factors that are relevant to the HEP's proposal or refusal.

This notification is not to be construed to preclude the HEP from asserting that the parent's due process notice was insufficient, where appropriate.

In the event a request is received solely by the VDOE, the VDOE shall immediately notify the HEP by telephone or facsimile and forward a copy of the request to the HEP as soon as is reasonably possible, including those cases where mediation is requested.

All requests for hearings and their contents shall be kept confidential by the HEP and the VDOE.

- C. Mediation** - Parents and HEPs may use the VDOE's mediation process as an informal means of resolving any dispute relative to special education matters at any time. It follows that HEPs shall ensure that the parent of a child with a disability is informed of the option of mediation to resolve issues involving the identification, evaluation, educational placement or services of a child, or the provision of a FAPE to the child, prior to the filing of a state complaint or request for a due process hearing.

While participation in the mediation process is voluntary on the part of the parties, the HEP may offer a parent who chooses not to use mediation the option of meeting with a disinterested party, who can encourage the use of mediation and explain the benefits of the process. Such a meeting shall be held at a time and location convenient to the disputants. It follows, however, that the HEP may not deny or delay a parent's right to a due process hearing if the parent chooses not to participate in this meeting.

The VDOE maintains a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. The mediator shall be chosen on a rotation basis and shall be impartial. Any person who serves as a mediator

1. may not be an employee of any LEA or the VDOE if it is providing direct services to a child who is the subject of the mediation process;
2. shall not have a personal or professional conflict of interest, including relationships or contracts with schools or parents outside of mediations assigned by the VDOE; and
3. is not an employee of the HEP or the VDOE solely because the person is paid by the agency to serve as a mediator.

The VDOE bears the cost of mediation, including those meetings which the HEP may require the parent who chooses not to use mediation to attend.

Discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings of any state or federal court. For this reason, parties to the mediation may be required to sign a confidentiality pledge prior to the commencement of the process. Any agreement reached by the parties to the dispute in the mediation process must be documented in a signed, written mediation agreement. Mediation agreements are enforceable in any state court of competent jurisdiction or in federal district court.

In no case shall mediation be used to deny or delay the due process rights of a parent beyond the 45 days allowable for a hearing or to deny any other rights under the regulations governing special education. Rather, mediation services shall be conducted in a timely manner in a location convenient to all parties.

- D. Impartial Hearing Officer** - The HEP shall appoint a hearing officer within 5 business days of the request for a hearing. The education director or designee shall contact the Supreme Court of Virginia to secure the name of a hearing officer. If, upon contact, the first person identified is unavailable or disqualified, the HEP shall immediately request another name to ensure that a timely appointment is made. Upon acceptance, the HEP shall appoint the hearing officer in writing, with a copy to the VDOE and the parent. Notably, in the case of an expedited hearing, the HEP must appoint the hearing officer within 3 business days of a request for a hearing.

The VDOE shall share information on qualifications of the hearing officer with the parent and the HEP, upon request. Either party has 5 business days after the notice of the appointment is made or the basis for the objections becomes known to object to the appointment. A hearing shall not be conducted by a person who

1. has a personal or professional interest which would conflict with that person's objectivity in the hearing;
2. is an employee of the VDOE or the HEP involved in the education and care of the child. A person who otherwise qualifies to conduct a hearing is not an employee of the agency simply because he is paid by the agency to serve as a hearing officer; or
3. represents schools or the parent in any matter involving special education or disability rights or is an employee of any parent or parents' rights agency or organization or disability rights agency or organization.

If a hearing officer recuses himself or is otherwise disqualified, the Supreme Court of Virginia shall ensure that another hearing officer is promptly appointed.

Once the special education hearing officer accepts the case assignment, his/her authority begins. The hearing officer has authority over the case until issuance of his/her decision or the Supreme Court of Virginia revokes such authority by removing or disqualifying the special education hearing officer.

The HEPs shall have on file a copy of the Supreme Court of Virginia's list of persons who serve as hearing officers, including a statement of each individual's qualifications.

- E. Child's Status During Proceedings** - Unless an HEP and the parent of the child agree otherwise, the child must remain in his/her current educational placement during the pendency of any administrative or judicial proceeding. However, this does not preclude using normal procedures for dealing with children who endanger themselves or others. Should the issue involve an application for initial admission to a public school, the child, with parental consent, must be placed in a public school program until the completion of all proceedings.

If the decision of the hearing officer agrees with the child's parent that a change of placement is appropriate, that placement shall be treated as an agreement between the HEP and the parent for the purpose of establishing the child's "stay put" status during the pendency of any administrative or judicial proceeding. In such instances, the "stay put" is the change in placement.

If the request for a due process hearing involves an application for initial services for a child who is transitioning from Part C, but who is no longer eligible for Part C services because the child has turned three, the HEP is not required to provide services that the child had been receiving under Part C. However, if the child is found eligible for special education and related services and the parent consents to the initial provision of those services, the HEP must provide the special education and related services that are not in dispute.

- F. Rights and Responsibilities of Parties to the Hearing** - Any party to a hearing has the right to be represented by legal counsel and individuals with special knowledge or training with respect to the problems of children with disabilities. Parties may present evidence and confront, cross-examine, and request that the hearing officer compel the attendance of witnesses. It is the responsibility of each party to disclose all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing at least 5 business days prior to the hearing. Failure to disclose may result in the hearing officer barring the introduction of such information at the hearing without the other party's consent. The parent must be given the right to have the involved child present and to have the hearing open to the public. Any party to a hearing has the right to obtain the written or, at the option of the parent, electronic, verbatim record of the hearing and findings of fact and decisions rendered by the hearing officer. These records and findings shall be provided at no cost to the parent even though the applicable appeal period has expired.

It is the responsibility of all parties to a hearing to

1. make timely and necessary responses to the hearing officer personally and through counsel or other authorized representative;
2. assist in clarifying the issues for the hearing and participate in the prehearing conference scheduled by the hearing officer;
3. provide information to the hearing officer to assist in his/her administration of a fair and impartial hearing;
4. provide documents and exhibits necessary for the hearing within required timelines; and
5. comply with timelines, orders, and requests of the hearing officer.

- G. Prehearing Responsibilities of the HEPs** - The HEP's confirmation of the appointment of a hearing officer shall be done in such a manner as to protect the confidentiality of the parent and the child. All necessary information shall be forwarded promptly to the hearing officer, together with the official request for a hearing, in order to ensure that timelines are maintained. Within 5 administrative working days of the appointment of a hearing officer, the HEP shall send a copy of the correspondence confirming the appointment of a hearing officer along with a copy of the request for a hearing to the VDOE. The HEP will also, upon request, assist the hearing officer in securing the location, transcription, and recording equipment for the hearing.
- H. Responsibilities of the Hearing Officer** - The hearing officer shall, within 5 business days of appointment, secure a time, date, and location for the hearing, working with both parties to ensure that the arrangements are convenient. Written notification of the time, date, and location of the hearing is to be provided to both parties and the VDOE. If the hearing is an expedited hearing, the hearing officer shall complete these responsibilities in 2 business days. Additionally, if the hearing officer ascertains that the parties will have attorneys or non-attorneys representing them at the hearing, copies of this correspondence shall be sent to them. The hearing officer shall also ascertain from the parent whether the hearing will be open and set guidelines regarding media coverage when necessary.

It is the responsibility of the hearing officer to ensure that a stenographer or recording equipment is present at the hearing, as all parties have the right to a written or, at the option of the parent, an electronic verbatim record of the proceedings. It is also the responsibility of the hearing officer to forward the record of the hearing to the HEP upon the conclusion of the case. Further, the hearing officer shall receive a list of witnesses and documentary evidence for the hearing no later than 5 business days prior to the hearing.

The hearing officer conducts a prehearing conference via a conference call or in person with the parties to the hearing and attorneys unless it is deemed unnecessary. Such a conference may be requested by the hearing officer or the parties to the hearing and used to clarify or narrow issues and determine the scope of the hearing. If a prehearing conference is not held, the hearing officer shall document in the written prehearing report to the VDOE the reason for not holding the conference. The hearing officer also has the power to issue subpoenas requiring testimony or the production of books, papers, and physical or other evidence. With regard to a subpoena, the hearing officer can rule on any party's motion to quash or modify a subpoena. The special education hearing officer shall issue the ruling in writing to all parties with a copy to the VDOE. Further, the special education hearing officer or a party may request an order of enforcement for a subpoena in the circuit court of the jurisdiction in which the hearing is to be held. Any person so subpoenaed may petition the circuit court for a decision regarding the validity of such subpoena if the hearing officer does not quash or modify the subpoena after objection thereto.

At the prehearing stage, the hearing officer shall

1. inform the parties of their rights to mediation and of the options that may be available to settle the case;
2. determine when an IDEA due process notice also indicates a Section 504 dispute, whether to hear both disputes in order to promote efficiency in the hearing process and avoid confusion about the status of the Section 504 dispute; and
3. document prehearing determination, including the right to appeal the case directly to either a state or federal court, in writing to all parties and the VDOE.

The hearing officer has the authority to permit either party to raise issues at the hearing that were not raised in the due process notice. In application this means

that the party requesting the hearing may only raise additional issues at the hearing if the other party agrees, except as follows:

1. if the other party will not agree to the additional issues being heard, the party requesting the hearing must initiate another request for a due process hearing to be heard separately on the additional issues; or
2. the hearing officer may use his/her discretion to permit additional issues to be raised even if the other party does not agree, per the request of the party requesting the hearing to include additional issues in response to facts, issues, or arguments raised by the other party.

In the event it is determined that a surrogate parent is needed, the hearing officer shall ensure that the HEP has appointed a surrogate parent who is acting to protect the educational interests and rights of the child.

- I. Due Process Hearing Procedures** - Procedures for a due process hearing demand that the rights of all parties to the hearing be protected by the hearing officer. Accordingly, it is the hearing officer's responsibility to ensure that an atmosphere conducive to impartiality and fairness is maintained at all times in the hearing. In this regard, the hearing officer may excuse witnesses after they testify, limit the number of expert witnesses present at the same time, or sequester witnesses during the hearing. The hearing officer may also stop hostile or irrelevant pursuits in questioning.

The hearing officer shall remand any matter in dispute to a conference between the parties when informal resolution and discussion appear to be desirable and constructive. This action shall not be used to deprive the parties of their rights and shall be exercised only when the best interests of the child will be served.

In the course of the proceedings, the hearing officer shall include in the written findings a determination as to whether the requirements of notice to the parent were satisfied; whether the child has a disability; whether the child needs special education and related services; and whether the HEP is supplying a FAPE.

The hearing officer shall make no presumptions in the case and shall base his/her findings of fact and decision(s) solely upon the preponderance of the evidence presented at the hearing and applicable state and federal laws and regulations. In matters alleging a procedural violation, the hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies

1. impeded the child's right to a FAPE;
2. significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or
3. caused a deprivation of educational benefits.

The hearing officer shall enter a disposition as to every issue presented for decision and identify and determine the prevailing party on each issue that is decided. The findings of fact and decision(s) shall be reported to both parties, their attorneys, the HEP, and the VDOE. If the hearing is an expedited hearing, the hearing officer may issue an oral decision at the conclusion of the hearing, followed by a written decision within 10 school days of the hearing.

In the written findings, the hearing officer shall include

1. findings of fact relevant to the issues that are determinative of the case;
2. legal principles upon which the decision is based, including references to controlling case law, statutes, and regulations;
3. an explanation of the basis for the decision for each issue that is determinative of the case; and,
4. if the special education hearing officer's findings require relief to be granted, an explanation of the relief granted.

As reflected above, the HEPs comply with the VDOE in ensuring that the decisions of hearing officers and the management of hearings comport with federal and state mandates.

- J. Resolution Meeting** - Prior to the due process hearing and within 15 days of receipt of the hearing request from a parent, the HEP shall convene the IEP team for a meeting. Notably, the parent and the HEP determine the relevant IEP team members, who have specific knowledge of the facts identified in the due process notice, to attend the meeting. In addition to their HEP director or designee, the meeting must include the appropriate VDOE official but not a VDOE attorney unless the parent brings an attorney.

The objective of the meeting shall be to provide the team with specific knowledge of the issues and the facts that form the basis of the hearing request and to discuss and attempt to resolve the complaint. If there is resolution, the parties execute a written, signed document that is enforceable in any state court of competent jurisdiction or in federal district court. As part of the agreement, the parent and the HEP may enter into a confidentiality agreement. The VDOE official would serve as the HEP's representative in signing the document as that individual would have the authority to bind the HEP. Such written settlement agreements are enforceable in any Virginia court of competent jurisdiction or in a federal district court. Either party has 3 business days within which to void the written agreement once it is executed. In the absence of resolution within 30 days of receipt of the hearing request, the hearing must proceed and all the applicable timelines for a due process hearing shall commence.

Unless the HEP and the parent jointly agree to waive the resolution meeting or to use mediation, the failure of a parent filing a due process notice to participate in the resolution meeting will delay the timelines for the resolution process and a due process hearing until the meeting is held. It follows that, if the HEP is unable to obtain the parent's participation in the resolution meeting after reasonable efforts have been made and documented, the HEP can request at the end of the 30-day period that the hearing officer dismiss the due process request.

Likewise, the parent has the right to request the hearing officer to begin the due process hearing timeline if the HEP fails to hold the resolution meeting within 15 days of receiving notice of a parent's request for a due process hearing or fails to participate in the resolution meeting.

Finally, in cases where the due process request is initiated by the HEP, the HEP is not required to schedule a resolution session.

- K. Timelines for Hearings** - The HEPs shall ensure compliance with the 45-day timetable for rendering a final decision in a hearing, unless otherwise documented by the reviewing officer, and for mailing a copy of the decision to the parties and the VDOE. The 45-day timeline starts the day after one of the following events:
1. the parties agree in writing to waive the resolution session or use mediation;
 2. the parties agree in writing that no agreement is possible after the initiation of the resolution meeting or mediation, but before the end of the 30-day period; or
 3. at the end of the 30-day resolution period, the parties agree in writing to continue mediation, but later either the HEP or the parent withdraws from the meditation process.

A hearing officer may grant specific extensions of time at the request of either party. This action shall in no way be used to deprive the parties of their rights and should be exercised only when the requesting party has provided sufficient information that the best interest of the child will be served. Changes in hearing

dates or timeline extensions are to be noted in writing and sent to all parties, their attorneys, and the VDOE within 5 business days. The hearing officer has the authority to take action to move the case to conclusion, including dismissing the pending proceeding if either party refuses to comply in good faith with the hearing officer's orders.

With regard to expedited hearings, they shall occur within 20 school days of the date the due process notice is received. In such cases, it is the responsibility of the special education hearing officer to make a determination within 10 school days after the hearing. Unless the parents and HEP agree in writing to waive the resolution meeting or agree to use the mediation process, a resolution meeting shall occur within 7 days of receiving notice of the due process complaint. The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint. Of note is the fact that the resolution period is part of, and not separate from, the expedited due hearing timeline.

- L. Costs of Due Process Hearings and Attorney's Fees** - The costs for a hearing shall be incurred equally by the HEP and the VDOE. They shall include the costs of an IEE, hearing officer, court reporters, and transcripts which are incidental to the hearing. Notably, the costs for any of these services incurred by a party for the specific benefit of that party's case are the responsibility of that party.

The VDOE shall also be responsible for the fees of the attorney representing the HEP in a due process hearing. Should the parent prevail in the hearing, he/she has the right to petition either a state circuit court or a federal district court for an award of reasonable attorney's fees as part of the costs. A state circuit court or a federal district court may award reasonable attorney's fees to the parent of a child with a disability who is the prevailing party only if the award is consistent with the limitations, exclusions, and reductions in accordance with IDEA and its implementing regulations.

If the VDOE or an HEP is the prevailing party, the court, in its discretion, may award reasonable attorney's fees against the

1. parent's attorney who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation or who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
2. the parent or the parent's attorney if it is determined that the due process hearing request or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to increase needlessly the cost of litigation.

- M. Implementation Plan** - The HEP shall develop and submit an implementation plan to the VDOE, along with a copy to the parent, within 45 days of the rendering of a decision in hearings that have been fully adjudicated. In cases where the decision is appealed or the HEP is considering an appeal and the decision is not an agreement by the hearing officer with the parent that a change in placement is appropriate, the decision and the implementation plan are held in abeyance pursuant to the appeal proceedings. However, in cases where the decision is an agreement by the hearing officer with the parent that a change in placement is appropriate, the hearing officer's decision must be implemented while the case is appealed, and an implementation plan must be submitted. The implementation must be based upon the decision of the hearing officer and, if the decision affects the child's educational program, include the revised IEP. The plan shall also contain the name and position of an HEP case manager charged with implementing the decision. Copies of this plan shall be forwarded to all parties to the hearing, the hearing officer, and the appropriate VDOE official responsible for SOPs.

- N. Right of Appeal** - The decision of the hearing officer shall be final and binding unless the decision is appealed. The statute of limitations period for filing an appeal in a state circuit court is 180 days while appeals in federal district court must be filed within 90 days of the decision. On appeal, the court shall review the records of the administrative proceedings, hear additional evidence at the request of a party, base its decision on a preponderance of the evidence, and grant the relief that the court determines to be appropriate.

If the hearing officer's decision is not implemented as required, a complaint may be filed with the VDOE for an investigation through the state's complaint system.

- O. Due Process File** - The HEPs shall maintain a file, which is a part of the student's education file, containing communications, exhibits, decisions, and mediation communications, except as prohibited by laws or regulations.

The hearing officer shall also maintain an organized and well documented record and return the official record to the HEP upon conclusion of the case. For any case that is appealed, it shall be the HEP's responsibility to forward the record of the due process proceeding to the appropriate court.

XI. Discipline

- A. Discipline Procedures** - A child with a disability shall be entitled to the same due process rights that all children are entitled to under the *Code of Virginia* and the LEA's disciplinary policies and procedures. In the event that the child's behavior impedes the child's learning or that of others, the IEP team shall consider the use of positive behavioral interventions, strategies, and supports to address the behavior. The IEP team shall consider either
1. developing goals and services specific to the child's behavioral needs; or
 2. conducting a FBA and determining the need for a behavioral intervention plan (BIP) to address the child's behavioral needs.

School personnel may consider any unique circumstances on a case-by-case basis when deciding whether or not to order a change in placement for a child with a disability that violates a code of student conduct. In reviewing the disciplinary incident, school personnel may review the child's IEP and any BIP or consult with the child's teacher(s) to provide further guidance in considering any unique circumstances related to the incident. School personnel may convene an IEP team for this purpose.

- B. Short-term Removals** - A student with a disability may be removed for a period of time up to 10 consecutive school days or 10 cumulative school days in a school year. School personnel may short-term remove a child with a disability from his/her current educational setting to an appropriate IAES, another setting, or suspension, to the extent those alternatives are applied to children without disabilities. Subsequent to this provision, a student with a disability may be removed for additional short-term removals in the same school year for separate incidents of misconduct as long as the removals do not constitute a pattern. The LEA determines when isolated, short-term removals for unrelated incidents of misconduct constitute a pattern. It follows that these short-term removals only constitute a change in placement if the LEA determines there is a pattern.

The LEA is not required to provide services during the first 10 days in a school year that a child with a disability is short-term removed if services are not provided to a child without a disability who has been similarly removed. For additional short-term removals, which do not constitute a pattern, the LEA shall provide services to the extent determined necessary to enable the student to continue to participate in

the general education curriculum and to progress toward meeting the goals of the student's IEP. The LEA shall also ensure that these children are included in the VDOE and divisionwide assessment programs.

C. Long-term Removals - Long-term removals are occasioned by a removal that is for more than 10 consecutive school days or when a series of short-term removals constitutes a pattern

1. because the removals cumulate to more than 10 school days in a school year;
2. because the child's behavior is substantially similar to the child's behavior in previous incidents that results in a series of removals; and
3. because of additional factors, such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another. The LEA determines on a case-by-case basis whether a pattern of removals constitutes a change in placement. Such determinations are subject to review through due process and judicial proceedings. Notably, it is the responsibility of the LEA to notify the parent of the decision and provide him/her with the procedural safeguards on the date on which the decision is made to remove the student long-term because of a violation of a code of student conduct.

School personnel may remove a child with a disability to an appropriate IAES for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days, without regard to whether the behavior is determined to be a manifestation of the child's disability, if

1. the child carries a weapon to school or possesses a weapon at school, on school premises, or at a school function;
2. the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while in school, on school premises, or at a school function; or
3. the child inflicts serious bodily injury upon another person while at school, on school premises, or at a school function.

The IEP team determines the services needed by a child with a disability who is long-term removed. Services received during the disciplinary removal are to enable the student to

1. continue to receive educational services which enable the student to continue to participate in the general educational curriculum, although in another setting;
2. continue to receive those services and modifications, including those described in the child's current IEP, which will enable the child to progress toward meeting IEP goals; and
3. receive, as appropriate, a FBA, and behavioral intervention services and modifications, designed to address the behavior violation so that it does not recur. LEA personnel shall also ensure that children with disabilities are included in the VDOE and divisionwide assessment programs.

D. Manifestation Determination - If a removal is contemplated that constitutes a change of placement for a child with a disability who has violated a code of student conduct that applies to all students, manifestation determination is required. The LEA, the parent, and relevant members of the child's IEP team, as determined by the parent and the LEA, constitute the IEP team that shall meet immediately, if possible, but not later than 10 school days after the decision is made to take action. The IEP team shall review all relevant information in the student's file, including the IEP, and teacher observations as well as any relevant information provided by the parent. The purpose of the review is to determine if the conduct in question was a manifestation of the child's disability, depending on whether it was

1. caused by or had a direct and substantial relationship to the child's disability; or
2. the direct result of failure to implement the IEP.

If the IEP team determines that the LEA failed to implement the child's IEP, the LEA shall take immediate steps to remedy those deficiencies. Should the IEP team determine that the child's behavior was a manifestation of his/her disability, the team shall return the child to the placement from which he/she was removed unless the parent and the LEA agree to a change of placement as part of the modification of the BIP. The exception to this provision is when the child has been removed for not more than 45 school days to an IAES for matters related to carrying/possessing a weapon, illegal drugs/controlled substances, or the infliction of serious bodily harm. In that case, school personnel may keep the student in the IAES until the 45-day period expires.

It is the responsibility of the LEA to conduct a FBA unless the LEA had conducted this assessment before the behavior that resulted in the change in placement occurred and implement a BIP for the child. The FBA may include a review of existing data or new testing data or evaluation as determined by the IEP team. In the event the IEP team determines that the FBA will involve obtaining new testing data or evaluation, the parent is entitled to an IEE if he/she disagrees with the evaluation or a component of the evaluation obtained by the LEA. If a BIP already has been developed, it is also the responsibility of the LEA to review and modify it, as necessary, to address the behavior.

If the IEP team determines that the child's behavior was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied in the same manner and for the same duration in which they would be applied to children without disabilities, except that the child with a disability who is long-term removed shall receive services during the disciplinary removal.

- E. Appeal** - If the child's parent disagrees with the determination that the student's behavior was not a manifestation of the student's disability or with any decision regarding placement under these disciplinary procedures, the parent may request an expedited due process hearing. Similarly, a LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others may request an expedited due process hearing. The LEA is responsible for arranging the expedited due process in keeping with the VDOE's hearing procedures.

The hearing shall occur within 20 school days of the date the request for the hearing is filed, and the special education hearing officer shall make a determination within 10 school days after the hearing. Unless the parent and the LEA agree in writing to waive the resolution meeting or agree to use the mediation process, a resolution meeting shall occur within 7 days of receiving the request for a hearing. The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the request for a hearing. Decisions on expedited due process hearings are appealable.

A LEA may request an expedited due process hearing under the VDOE's due process hearing procedures to effect a change in placement of a child with a disability for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's if the LEA believes that the child's behavior is substantially likely to result in injury to self or others. The special education hearing officer may

1. return the child with a disability to the placement from which the child was removed if the special education hearing officer determines that the removal was a violation related to long-term removal or manifestation determination procedures or that the child's behavior was a manifestation of the child's disability; or

2. order a change in the placement to an appropriate IAES for not more than 45 school days if the special education hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the student or others.

A LEA may ask the special education hearing officer for an extension of 45 school days for the IAES of a child with a disability when school personnel believe that the child's return to the regular placement would result in injury to the student or others.

The child shall remain in the IAES pending the decision of the special education hearing officer or until the expiration of the time for the disciplinary period, whichever comes first, unless the parent and the LEA agree otherwise.

F. Protections for Children Not Yet Eligible for Special Education and Related Services - A child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violates a code of conduct of the LEA may assert the same procedural safeguards applied to students who have been determined eligible if the LEA had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

The LEA shall be deemed to have knowledge that the child is a child with a disability if before the behavior that precipitated the action occurred

1. the parent of the child expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to school personnel that the child is in need of special education and related services;
2. the parent of the child requested an evaluation of the child; or
3. the teacher of the child or other school personnel expressed concern about a pattern of behavior demonstrated by the child directly to supervisory personnel.

The LEA would not be deemed to have knowledge that a child is a child with a disability if

1. the parent of the child has not allowed a previous evaluation of the child or has refused services; or
2. the child has been evaluated and determined ineligible for special education and related services.

If the LEA does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures applied to a child without a disability who engages in comparable behaviors.

Should a request be made to evaluate a child during the time period in which the child is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner. Until the evaluation is completed, however, the child remains in the educational placement determined by school personnel, which can include suspension or expulsion without educational services. If the child is determined to be a child with a disability, taking into consideration information from the evaluations conducted by the LEA and information provided by the parent, the LEA shall provide special education and related services as required for a child with a disability who is disciplined.

G. Referral to and Action by Law Enforcement and Judicial Authorities - Nothing prohibits a LEA from reporting a crime by a child with a disability to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and

state law to crimes committed by a child with a disability to the extent such action applies to a student without a disability.

In reporting the crime the LEA shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom school personnel report the crime. Transmission of such records shall be in accordance with requirements under the Guidelines for the Management of the Student's Scholastic Record in the Public Schools of Virginia (May 2004).

- H. Information on Disciplinary Actions** - The VDOE requires that LEAs include in the records of a child with a disability a statement of any current or previous disciplinary action taken against the child. LEAs are responsible for transmitting the statement to the VDOE upon request to the same extent that the disciplinary information is included in and transmitted with the student records of students without disabilities. The statement may include
1. a description of any behavior engaged in by the child who required disciplinary action;
 2. a description of the disciplinary action; and
 3. any other information that is relevant to the safety of the child and other individuals involved with the child.

If the child transfers from one school to another, the transmission of any of the child's records shall include the child's current IEP and any statement of current or previous disciplinary action taken against the child.

XII. General Student-Related Policies

- A. Students Who Require a Regular Program of Studies** - When students who are enrolled in regular academic programs in elementary or secondary schools transfer into the HEP, they are afforded similar or modified educational opportunities. Upon a student's enrollment, it is the responsibility of the hospital teacher to contact appropriate home school personnel to request information about the student's academic program. Information regarding textbooks, special projects, grade level placements, special tests to include SOL, exams, etc., is obtained and reviewed.

When initiating an individualized instructional plan for these students, modifications in the academic program may be required because of the patient's medical status. If modifications are necessary, the student's parent, LEA personnel, and the student, when appropriate, are informed of the need and involved in the decision making. Educational staff assigned to the facility work closely with personnel from each student's home school in an effort to ensure a smooth transition between the hospital and the school. When the student is discharged from the hospital, a letter verifying the number of days of instruction the student received is sent to appropriate LEA personnel. The discharge letter also provides detailed information regarding assignments completed, titles and publishers of textbooks used, grades earned, and SOL covered (indicated on grid sheet) during instructional sessions.

- B. McKinney-Vento Act** - The HEPs are committed to educating children and youth during hospitalizations, including those who are considered to be homeless as defined by the McKinney-Vento Act. All students, including those identified as homeless, are enrolled according to HEP policy and are not refused or delayed enrollment due to a lack of educational records and/or immunization records. It should be noted, however, that students who are enrolled in an HEP are in residence and, therefore, can not attend a school of origin as specified in the McKinney-Vento Act.

Although unique in its role related to the McKinney-Vento Act, the HEPs recognize the impact of homelessness on students and remain committed to providing a full and equal opportunity for academic success and achievement to all students. Should issues arise related to students experiencing homelessness upon discharge, the education director or designee will communicate with the student's school of origin to help facilitate a smooth transition.

- C. Student Home Language Survey** - Under provisions of the Civil Rights Act of 1964, each student's dominant language must be identified. This information is essential in order for schools to provide meaningful instruction. It follows that a Home Language Survey must be completed for all enrolled students.

If the student's first language is not English, the student's English abilities should be tested using the WIDA ACCESS Placement Test™ (W-APT™) to determine his/her LEP. Each student should be tested, regardless of his/her oral ability.

The World-Class Instructional Design and Assessment (WIDA) English Language Proficiency (ELP) Standards and the Assessing Comprehension and Communication in English State-to-State for English Language Learners (ACCESS for ELLs) have been approved by the Virginia Board of Education. The chart below reflects the state codes.

LEP Student Reporting	
LEP State Code	WIDA English Language Proficiency (ELP) Level
15	Level 1 – Entering
16	Level 2 – Beginning
17	Level 3 – Developing
18	Level 4 – Expanding
19	Level 5 – Bridging, First Year
20	Level 5 – Bridging, Second Year
21	Level 6 – Reaching, First Year (Reclassified as Non-LEP, no longer required to take the ACCESS for ELLs)
22	Level 6 – Reaching, Second Year

Notably, if a student's LEP status is unknown or cannot be determined by the results of the W-APT™, the student should be classified as Level 1 for reporting purposes.

- D. Minute of Silence** - In order that the right of every student to the free exercise of religion be guaranteed within the schools and that the freedom of each individual student be subject to the least possible pressure from the Commonwealth either to engage in or refrain from religious observation on school grounds, HEPs shall establish the daily observance of one minute of silence.

Each HEP teacher shall daily observe the one-minute period of silence during her first class, whether that instructional session occurs in a classroom or a patient room. The teacher shall take care that students remain silent and make no distracting display to the end that each pupil may, in the exercise of his/her individual choice, meditate, pray, or engage in any other silent activity which does not interfere with, distract, or impede other students in the like exercise of individual choice.

- E. Parent Involvement** - At the time of a child's admission, the parent is informed of the educational services provided and asked to give consent for home school contact and educational screening.

Because a parent who consults frequently with the teaching staff provides much valuable information for individual program planning, every effort is made to communicate regularly with a parent throughout a child's hospitalization. Moreover, during admissions, the parents of children who have experienced a change of status and were not previously identified as needing special education and related services often confer with HEP staff regarding IDEA and their rights and possible referral for determination of their child's eligibility for services.

Likewise, for children already identified as needing special education and related services, a parent, as an integral member of the IEP team, is invited to participate in any meetings regarding their child's IEP, including modification.

Physical and time constraints, however, sometimes limit the degree of parent consultation possible in a medical setting. For example, many parents are unable to stay with their child or visit on a regular basis due to financial restraints, job responsibilities, the need to care for other children, or distance from the hospital. Further, a parent who "rooms in" or visits is often under much stress and is called upon to interact with numerous staff members on the interdisciplinary team (statistics suggest that this number is approximately 52 per day).

During the period of admission, HEP staff members typically have more contact with the parents of younger children with disabilities. Training activities and consultation services for parents include

1. assisting them in understanding the child's medical diagnosis and prognosis in order to establish realistic expectations of development;
2. acquainting mothers and fathers with parent support groups;
3. equipping them with knowledge of available community resources; and
4. making available a bibliography of materials, books, and other resources.

Telephone contact is maintained, as appropriate, with parents who are unable to consult directly with the hospital teacher. In addition, progress reports are sent in correspondence with the grading periods of children's home schools to the parents of intermediate-term stay patients, with copies to appropriate local school personnel. Parental participation in conferences at the time of discharge to discuss the child's transition from hospital to school is particularly helpful. In all cases, services to the parents are available not only during the child's hospitalization but as follow-up after discharge.

- F. Network/Internet Acceptable Use** - HEP computers are intended to facilitate learning as well as personal and professional growth. The use of technology allows students to learn new skills, do homework, explore career development, conduct research, communicate electronically, and have Internet accessibility. It is the responsibility of hospital teachers to review or orient students to all aspects of security and ethics involved in using the Internet, per the State Operated Program Network/Internet Acceptable Use Policy. It follows that eligible students or parents of all students under the age of eighteen must sign this policy indicating that they

understand its contents and agree to abide by its guidelines before accessing the Internet.

Access to Internet resources is available with the understanding that some material may be inaccurate. Use of the Internet for educational purposes may include research, career development, extracurricular activities, and electronic communication. All users are expected to demonstrate ethical behavior; polite, civil communication; individual integrity and honesty; and respect for self and others and their confidentiality.

Likewise, unacceptable use of Internet resources includes using the network for illegal, inappropriate, obscene, or harmful purposes or in support of such activities; using inappropriate material or profane, abusive, or impolite language to communicate; accessing materials that are not in line with the rules of school behavior; infringing upon copyright laws, software piracy, or plagiarism; using the network for commercial use or monetary gain; and engaging in any activity that is harmful to the institution's computers. Harmful activity includes creation or propagation of computer viruses; corrupting, copying, or manipulating computer data (hacking); disrupting the use of the network by other users; mass mailing (spamming); sharing or exchanging passwords; and purchasing products, information, goods, or services.

Any observation of violations or other suspected incidents of noncompliance are to be reported to the education director immediately. Violation of the guidelines as articulated in the State Operated Program Network/Internet Acceptable Use Policy will result in appropriate disciplinary action, to be determined by the individual HEP.

- G. High School Credit** - Credit may be granted toward promotion and graduation from a secondary school for subjects taught by a teacher endorsed in a specific area of special education or related subject for which she is employed. According to the Standards for Accrediting Schools in Virginia, Revised 2009, the standard unit of credit means "credit awarded for a course in which the student successfully completes 140 clock hours of instruction and the requirements of the course."

The term "instruction" shall be interpreted to include independent study when such study is limited to those students who have demonstrated the maturity and ability requisite for this type of learning experience and when the supervisory teacher provides for appropriate direction, a means of accountability, and student evaluation. Supervised study shall not be interpreted as independent study.

Credit may be earned in increments of less than whole units and may be recorded as such. Under no circumstances shall a unit of credit be awarded for completion of a course that is the same, or essentially the same, as a course for which the student already has received credit.

Credit may be awarded to a student upon successful completion of an individually designed course consistent with the IEP in which 140 clock hours of instruction have been provided. An alternative method for granting credit is available at the discretion of school division officials and may be better suited to the needs of the student. The following conditions must be met under this alternative:

1. the scope of each course for which credit is awarded under this provision must be comparable to the scope of a corresponding course meeting the standard of 140 clock hours of instruction;
2. a set of performance objectives for a well-defined course of study must be developed. This set of goals will clearly indicate that, upon completion, the student has met the aims and objectives of the course as evidenced through

the mastery of certain predetermined objectives and requirements associated with the course;

3. procedures for evaluating the progress of students in this program must be established. Such procedures could include criterion-referenced tests or standardized tests; and
4. a written policy covering this program must be developed and approved by the student's LEA.

The LEA superintendent, not the HEP, is responsible for granting credit.

- H. Attendance Credit** - A student seen for three days by an HEP is officially enrolled. Notification is sent to the LEA regarding the need to withdraw the student. At the time of discharge, documentation certifying attendance is sent to the LEA of each enrollee. No student may be denied transfer of attendance credit.

Children in attendance for less than three days are classified for monthly reporting purposes as incidentals.

- I. State Testing Identifiers (STI)** - All students enrolled in Virginia schools are assigned a ten-digit State Testing Identifier. It is the responsibility of hospital teachers to obtain student identification numbers from their home schools. In cases where a child's HEP enrollment also is the child's initial enrollment in a Virginia school, the hospital teacher is to alert the HEP administrative assistant who will request a STI from the VDOE.

All discharge correspondence with home schools is to include the STI numbers of students.

- J. Transition Services** - A system of communication between education and other personnel, including medical and interdisciplinary staff, is provided. This communication is aimed at ensuring coordination of program objective(s); continuity of service(s) in the transition of a child into the educational program of the facility; subsequent utilization of other educational programs; receipt of services from other agencies; and employment of children. To promote continuity, the following communication system is in place.

1. **Preadmission** - When hospitalization has been anticipated in advance, information about the HEP is included in the preadmission packets sent to the families of school-aged patients. Likewise, the HEP staff receive preadmit information on scheduled admissions through computer networking.
2. **Hospitalization** - Upon admission the student and the parent are contacted by a staff member. Parental consent for conducting informal assessment/screening and contacting the home school is obtained on an Educational Release Form. Pertinent information regarding the student's home school, teachers, and courses of instruction is requested.

The hospital teacher informs the home school teacher or guidance counselor of the child's hospitalization and estimated length of stay. A letter confirming HEP enrollment is also sent to the appropriate LEA representative. Arrangements are made for textbooks and assignments to be forwarded/faxed, and short-term objectives necessary to prepare the student for a successful return to school are formulated. Information regarding the child's educational background and current status is obtained to assist in the development of a total treatment plan during hospitalization. If the child is enrolled in a special education program, the current IEP and eligibility information are requested from the home school.

During the period of hospitalization, ongoing contact with the child's teacher or guidance counselor is maintained in order to obtain additional assignments and to ascertain the child's progress in relation to the class. In addition, progress reports are sent in correspondence with the grading periods of the child's home school to the parent, with copies to the home school teacher/counselor.

Periodic interdisciplinary staffings are held to ensure coordination of a total treatment plan. These meetings are often supplemented by individual patient care conferences. Charting by hospital teachers during a child's admission also serves to provide more complete communication of assessment results, observations, and referral data. Finally, for a child suspected of or having a disability, members of the interdisciplinary team are involved in the formal assessment, eligibility determination, and IEP process along with parents and LEA personnel.

Plans for transitioning are developed at this time, if appropriate. All liaison contacts are documented in the student's file.

- 3. Discharge** - At the time of discharge, hospital teachers may be involved in interpretive sessions with the family to review the outcomes of the child's admission and discuss transition plans.

When an enrollee is discharged, a letter verifying the number of days of instruction the student received is sent to the home school. The discharge letter provides detailed information regarding assignments completed, titles and publishers of textbooks used, grades earned, and SOL covered (indicated on grid sheet) during instructional sessions. Comments regarding the transition of the student to school are also incorporated. In cases where children have been determined eligible for special education and related services during hospitalization, copies of all reports and proceedings are also forwarded to the LEA. If a student is discharged before assessment procedures are completed or during the eligibility process, all educational records will be forwarded and an appropriate referral will be made to the receiving LEA, SOP, or other agency.

Should homebound instruction be deemed necessary by the student's physician, the teacher expedites the completion of the Certificate for Need for Homebound Instruction and sends it to the appropriate LEA designee.

- K. Follow-up** - Follow-up contributes to the HEPs' program assessment, putting past, present, and future behavior in perspective. It fulfills a continuing professional responsibility of SOPs to define programmatic goals, evaluate the effectiveness of the programs in attaining these goals, and study methods and procedures for increasing program effectiveness. Studying outcomes of former students also makes it possible to identify those in need of further assistance and to evaluate specific educational practices and the general impact of educational services during hospitalization.

While classroom teachers typically work with students for 180 days and often may maintain contact with them as they matriculate through the school system, this scenario does not exist for hospital teachers. Rather, teaching in a hospital setting involves "borrowing" children, usually for a short time, from their home schools. Thus, hospital teachers seldom have the opportunity to see their students develop and progress. Follow-up serves to provide teachers with feedback and closure, letting them know whether a child has returned to his/her home school setting and how he/she is doing.

Follow-up also allows HEP staff to confirm that home school personnel received discharge correspondence. This communication is particularly important at the

middle and secondary levels where information needs to be disseminated to teachers in each subject area. Home school personnel's need for further information may be identified, as well.

Follow-up provides a mechanism by which the HEP can ascertain its success in addressing children's education needs during hospitalization. As SOPs, it is critical not only to determine the general impact of educational services but, given the emphasis on the SOL, to assess students' ability to reintegrate into their home schools. Through follow-up the HEPs also gain the perspective of home school counterparts across the Commonwealth. Teachers and counselors in LEAs may offer helpful suggestions for more effective service delivery.

As the final step in the programs' involvement with students, follow-up builds relationships between the HEP and home school personnel. These contacts indicate continuing interest in former students. Further, the rapport established facilitates being able to address episodic upheavals, should they arise, and/or sets the stage for the student's readmission or the enrollment of another student from the community. Concomitantly, follow-up allows HEP staff to express appreciation to home school personnel for their cooperation during the student's hospitalization and their efforts to facilitate his/her transition back to the home school.

To achieve the HEPs' commitment to follow-up, each student's return to school is monitored as specified by the individual HEP. Documentation is placed in the child's student file.

XIII. Record Keeping and Confidentiality of Information

- A. Student Attendance** - HEPs are expected to maintain student enrollment and attendance information according to the requirements specified by the VDOE.
- B. Education Records/Student Files** - An individualized student file is to be maintained on each child enrolled in an HEP. All records are maintained in a confidential manner in accordance with the Guidelines for the Management of the Student's Scholastic Record in the Public Schools of Virginia (May 2004), the FERPA, the No Child Left Behind Act of 2001, and the National Defense Authorization Act for Fiscal Year 2002.

In accordance with the expanded FERPA definition of "education record," student files include all electronic exchanges that contain personally identifiable information between school personnel and parent(s) regarding matters associated with the child's educational program. These matters shall include electronic exchanges pertaining to IEP meetings, disciplinary actions, or service delivery.

Other confidential information can be found in the hospital charts maintained at the nurses' station or in the Medical Records Department.

1. Parent and Eligible Student Rights

The HEPs ensure parents and eligible students their rights regarding inspection and review of student files.

The FERPA defines "parent" as a parent of a student and includes a natural parent, a guardian, custodial stepparents, or an individual acting as a parent in the absence of a parent or guardian. As specified by section 20-124.6 of the *Code of Virginia* and FERPA, the HEPs give full rights to either parent unless the institution has been provided a copy of a judicial order or decree or other legally binding documentation that the parent does not have the authority under

applicable Virginia law relating to such matters as guardianship, separation, and divorce.

A stepparent has the same right under FERPA as a natural parent, provided that the stepparent is present on a day-to-day basis with the natural parent and child, and the other parent is absent from the home. Conversely, a stepparent who is not present on a day-to-day basis in the home of the child does not have rights under FERPA with respect to that child's student file.

"Eligible student" means a student who has reached 18 years of age (age of majority) or is attending an institution of postsecondary education. Parents lose their FERPA rights when their child turns 18. A parent of a child with a disability who is 18 may retain his/her rights provided that the child has been determined to be legally incompetent or legally incapacitated.

The HEPs distribute the Notification of Rights Regarding Student Files annually to parents and eligible students, alerting them to their rights under FERPA. Interpreter services and audiotapes of the annual notice are available to those who are unable to access printed English.

2. Inspection and Review

The HEPs provide the parent and eligible student the following access rights:

- a. the right to inspect and review any education records relating to the child that are collected, maintained, or used. When a record pertains to more than one child, the parent has the right to inspect and review or be informed only on that part of the record that relates to his/her child. An eligible student also has a right to inspect and review his/her student file. The HEPs comply with a request to inspect or review a child's student file within a reasonable period of time.
- b. the right to inspect or review the child's student file without unnecessary delay and before any meeting regarding an IEP or any hearing or resolution session. It also allows the parent to have a representative inspect and review the records.
- c. the right to (1) a hearing to challenge the content of a record to ensure it is not inaccurate, misleading, or otherwise in violation of the privacy rights of students, (2) an opportunity to correct or delete inaccurate, misleading, or otherwise inappropriate data, and (3) insertions of a written explanation regarding the contents of the record.
- d. the right to annual public notice of parent rights and designated categories of directory information and a reasonable time period (not to exceed 45 days) during which to refuse to allow the release of directory information without prior consent.
- e. the right to a copy of the student file if circumstances effectively prevent the parent or eligible student from exercising the right to inspect and review it. In addition, the parent is entitled to receive copies, upon request, of records that are disclosed to another school that his/her child is attending or plans to attend.
- f. the right to a response to reasonable requests for explanations and interpretations of the record. In responding, the HEP arranges to meet with the parent or eligible student at a mutually convenient time. The hospital teacher/educational consultant and education director are to be available to answer any questions or explain information included.

3. Disclosure

Before personally identifiable information is disclosed from a student's file, the parent or eligible student shall provide a signed and dated written consent. Notably, signed and dated written consent may include a record and signature in electronic form. The written consent must specify the records to be disclosed, the purpose of the disclosure, and the party to whom disclosure may be made. However, there are parties to whom data may be disclosed without

prior written consent of the parent or eligible student. It is the responsibility of the HEPs to ensure that no personally identifiable information is disclosed to any parties without prior written consent other than those authorized by FERPA. The disclosure must meet one or more conditions for an HEP to disclose personally identifiable information from a student file without the consent of a parent or eligible student.

The HEPs maintain a record of each request for access to and each disclosure of personally identifiable information from student files. This record shall be maintained in the individual student's file as long as the files are maintained. Those individuals with legitimate educational interest in the content of a student's file are not required to sign the Record Data Disclosure Form.

4. Fees

The HEPs may charge a reasonable copy fee unless imposition of such a charge would prevent a parent from exercising his/her right to inspect and review his/her child's student file. The fee may include costs associated with reproduction, secretarial or administrative time, and postage. The HEPs may not charge a fee to search for and retrieve information or for a copy of the current IEP.

5. Amendment

If the parent or eligible student believes the student file contains information that is inaccurate, misleading, or in violation of the student's rights of privacy, the parent or eligible student may ask the HEP to amend the record. The HEP shall decide whether to amend the information as requested within a reasonable time after the request is received. If the HEP decides not to amend the information as requested, it shall inform the parent or eligible student of its decision and of his/her right to a hearing.

6. Hearings

Upon parental request, the HEP shall provide an opportunity for a hearing, in accordance with the Virginia special education hearing officer system, to challenge information in the student file to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

All hearings shall be conducted in accordance with FERPA procedures.

If, as a result of the hearing, the HEP decides that the information in the student file is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall amend the information and so inform the parent in writing. If, as a result of the hearing, the HEP decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of the right to place a statement in the student file, commenting on the information or stating why he/she disagrees with the HEP's decision. Any explanation placed in the files shall be maintained by the HEP as part of the records of the child as long as the student file is maintained. And, should the records of the child be disclosed by the HEP, the explanation shall also be disclosed to the party.

7. Consent

Parental consent shall be obtained before personally identifiable information is disclosed to anyone other than officials of the HEP unless the information is contained in the student file and the disclosure is authorized under the FERPA. Parental consent is not required, however, before personally identifiable information is disclosed to officials of the HEPs collecting, maintaining, or using personally identifiable information, except that

- a. parental consent or the consent of a child who has reached the age of majority shall be obtained before personally identifiable information is released to officials of any agency or institution providing or paying for transition services; or
- b. if a child is enrolled or is going to enroll in a private school that is not located in the LEA where the parent resides, parental consent shall be obtained before any personally identifiable information about the child is released between officials in the LEA where the private school is located and LEA officials where the parent resides.

8. Safeguards

There are specific safeguards to protect the confidentiality of education records of children with disabilities. Each HEP shall

- a. protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages;
- b. ensure that electronic communication via e-mail or facsimiles regarding any matter associated with the child, including matters related to IEP meetings, disciplinary actions, or service delivery, be part of the child's student file;
- c. designate one official to assume responsibility for ensuring the confidentiality of any personally identifiable information;
- d. provide training or instruction on the management of student files and procedures for assuring confidentiality of information to all persons collecting, maintaining, or using personally identifiable information; and
- e. maintain for public inspection a current listing of the names and positions of HEP employees who may have access to personally identifiable information.

9. Destruction

The Records Retention and Disposition Schedule (General Schedule No. 21) of The Library of Virginia addresses public school records for all public school systems in the Commonwealth. Series number 009538 describes SOP Student Education Records. It states that "This series consists of SOP education records of students residing in detention homes, hospitals, specialty clinics, or mental health facilities. These records may include, but are not limited to, student information, assessments, behavioral reports, grades, course work, test scores, copies of student records from the LEA, SOP created assignments, and IEPs."

When students enrolled in the HEPs are discharged, documentation, which may include assessments, behavioral reports, grades, course work, test scores, and IEPs, is transferred to the LEA. Because the HEPs' student files are not cumulative records containing long-term documentation, they may be destroyed five years after students are withdrawn.

In keeping with The Library of Virginia directives, destruction of confidential or privacy-protected records is done by shredding or pulping. "Deletion" of confidential or privacy-protected records in computer files or other electronic storage media is not acceptable. Electronic records are either "wiped" clean or the storage media is physically destroyed.

10. Electronic Mail and Signature

If the HEP makes the option available, the parent of a child with a disability may elect to receive prior written notice, the procedural safeguards notice, and the notice of a request for due process by electronic mail. However, posting of the procedural safeguards on the HEP website does not satisfy the requirements related to providing parents with prior written notice.

If an electronically filed document contains an electronic signature, the electronic signature has the legal effect and enforceability of an original signature. An electronic signature is an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

11. Audio and Video Recording

The HEP shall permit the use of audio recording devices at meetings convened to determine a child's eligibility; to develop, review, or revise the child's IEP; and to review discipline matters. It is the responsibility of the parent to inform the HEP before the meeting in writing, unless the parent cannot write in English, of his/her intent to audio record the meeting. If the parent does not inform the HEP, the parent must provide the HEP with a copy of the audio recording. The parent shall provide the audio equipment and materials for audio recording. If the HEP audio records meetings or receives a copy of an audio recording from the parent(s), the audio recording becomes a part of the child's student file.

The HEP may have policies that prohibit, limit, or otherwise regulate the use of video recording devices at meetings or audio or video recording devices at meetings other than those meetings identified in the above paragraph. These policies shall

- a. stipulate that the recordings become part of the child's student file;
- b. ensure that the policy is uniformly applied; and
- c. if the policy prohibits the use of the devices, provide for exceptions if they are necessary to ensure that the parent(s) understands the IEP and the special education process or to implement other guaranteed parental rights.

C. Inventories - Current inventories of materials and equipment must be maintained according to the source of funding.

D. Reports -

1. Department of Education

- a. Annual Program Plan
- b. Monthly Attendance Reports
- c. Education Directory Information Report
- d. Teacher Daily Assignment Report (TDA)
- e. Inventories
- f. Budget Requests
- g. Other

2. Part B Flow-Through

- a. Grant Application
- b. Reimbursement Requests
- c. ADA Count - December 1 (K6 Report)
- d. Inventory of Equipment
- e. Other

3. Student Information System - All students who enter a hospital facility will be enrolled on their first day of attendance through the State Operated Programs student information system.